

**Legislative
Commission
On
Expenditure
Review**

**Office
of the
Special
Narcotics
Prosecutor**

**Program Audit
March 1989**



STATE OF NEW YORK
**LEGISLATIVE COMMISSION
ON EXPENDITURE REVIEW**

111 WASHINGTON AVENUE — ALBANY, NEW YORK 12210-2277
518-455-7410

TARKY LOMBARDI, Jr.
Chairman

JAMES J. HAAG
Acting Director

SAUL WEPRIN
Vice Chairman

MEMBERS

RALPH J. MARINO
Temporary President, Senate

MELVIN H. MILLER
Speaker, Assembly

TARKY LOMBARDI, Jr.
Chairman, Senate Finance

SAUL WEPRIN
Chairman, Assembly Ways and Means

JAMES R. TALLON, Jr.
Assembly Majority Leader

RONALD B. STAFFORD
Senate Deputy Majority Leader

MANFRED OHRENSTEIN
Senate Minority Leader

CLARENCE D. RAPPLEYEA, Jr.
Assembly Minority Leader

DONALD M. HALPERIN
Minority Member, Senate Finance

JOHN C. COCHRANE
Minority Member, Assembly Ways and Means

DAVID S. MACK
Partner, The Mack Company

OFFICE OF THE SPECIAL NARCOTICS PROSECUTOR

Summary and Conclusions

In 1971, the Legislature authorized the Special Narcotics Program to support felony narcotics prosecution in New York City. The program was intended to reduce the backlog of narcotics cases, stem the flow of illegal drugs and remove narcotics violators from the community. This program is even more important today as the annual number of New York City felony drug indictments has more than tripled since 1983. The Office of the Special Narcotics Prosecutor, the central program element, was given citywide jurisdiction to prosecute felony narcotics cases. Decentralized offices were established in the Bronx, Kings, Queens and New York district attorney offices, and a central office was created in New York County. The Special Narcotics Prosecutor was expected to provide centralized direction to coordinate the effective and expeditious processing of narcotics indictments.

This audit assesses the Special Prosecutor's role as a citywide narcotics prosecution force by reviewing its coordination with other agencies, the nature and processing of its caseload and its plea bargaining record. The Special Prosecutor's impact in stemming the flow of drugs was not directly assessed. We compared two case samples of 1986 drug felony indictments from the Special Prosecutor and from the Bronx, Kings and Queens District Attorney offices, made data requests to State, City and federal agencies, interviewed staff of the principal narcotics law enforcement and prosecution agencies in New York City, and interviewed the City administrative judges.

The report finds that the establishment of a coordinated citywide narcotics prosecution force has not been fully realized. The central Special Prosecutor's office based in New York County and the decentralized staffs in Bronx, Kings and Queens have operated independently. The Special Prosecutor also has assumed responsibility for prosecuting almost all New York County felony drug indictments. Though the central office has prosecuted more serious and complex cases, these cases were disproportionately concentrated in New York

County rather than distributed citywide. The Special Prosecutor's plea bargaining policy resulted in fewer State prison sentences than the other prosecutors for comparable cases.

Legislative Intent

The Special Narcotics Program was established in 1971 to augment the prosecution of felony narcotics cases in New York City. The program was intended to reduce the backlog of narcotics cases, remove narcotics violators from the community, and thereby stem the flow of illegal drugs. The Special Narcotics Prosecutor was granted citywide jurisdiction over felony narcotics cases and charged with coordinating prosecutions citywide. The prosecution program included a central office in New York County and initially decentralized offices in New York, Bronx, Kings and Queens. In November 1972, the central office assumed responsibility for prosecuting almost all New York County felony drug indictments.

Program Staffing and Finances

Program staff has been primarily allocated to the central Special Prosecutor office. From November 1973 to December 1987, central office legal staff grew by 250 percent while decentralized staffs in Bronx, Kings and Queens only rose by 20 percent. As of December 1987, the central office had 81 percent of the legal staffing and 87 percent of the support staff. Since the central office prosecutes almost all New York County drug felony indictments, the State Special Narcotics Program supports a much larger share of New York County's drug felony indictment workload than it does for Bronx, Kings and Queens.

During 1987-88, Special Narcotics Program expenditures were \$4.8 million. The Special Prosecutor is supported by federal, State and City funds. State funds (excluding the State buy money appropriation) have declined from 55 percent to 36 percent of State-City combined

expenditures from 1984-85 to 1987-88. The Special Prosecutor has received \$2,340,268 in awards under the Federal Assets Forfeiture Sharing Program. Federal guidelines require that these awards supplement rather than supplant a prosecutor's resources.

From 1984-85 to 1987-88, \$750,000 were appropriated annually for the Special Prosecutor's use as buy money to purchase controlled substances. The Special Prosecutor used \$212,008 of the buy money for informant payments and \$19,380 for operational expenses of narcotics investigations, purposes not allowed under the appropriation. The Special Prosecutor's semiannual buy money reports have not included the detailed monthly cost accounting required by the legislative appropriation.

Development and Nature of Prosecutors' Caseloads

Agency Relationships

An array of federal, State and local agencies enforce narcotics laws and prosecute offenders in New York City. Narcotics officers in the Organized Crime Control Bureau of the New York City Police Department are the primary local enforcers of narcotics laws. The New York City Drug Enforcement Task Force staffed by federal, State and local law enforcement officers investigates and apprehends middle and high level drug traffickers. The Special Prosecutor, other City District Attorney offices, the State Organized Crime Task Force and two U.S. Attorney offices are the major narcotics prosecution agencies.

Despite the Special Prosecutor's mandate to coordinate a citywide prosecution force, the central Special Prosecutor's office and the Bronx, Kings and Queens decentralized offices have operated independently of one another with only informal coordination. The decentralized staffs have functioned as part of their respective district attorney offices. During 1986 and 1987, the Bronx, Kings and Queens District Attorney offices had only two joint prosecutions with the Special Prosecutor. The Special Prosecutor felt that the presence of independently elected district attorneys contributed to this lack of formal coordination. The Queens District

Attorney indicated that the Special Prosecutor should be more accountable to each district attorney.

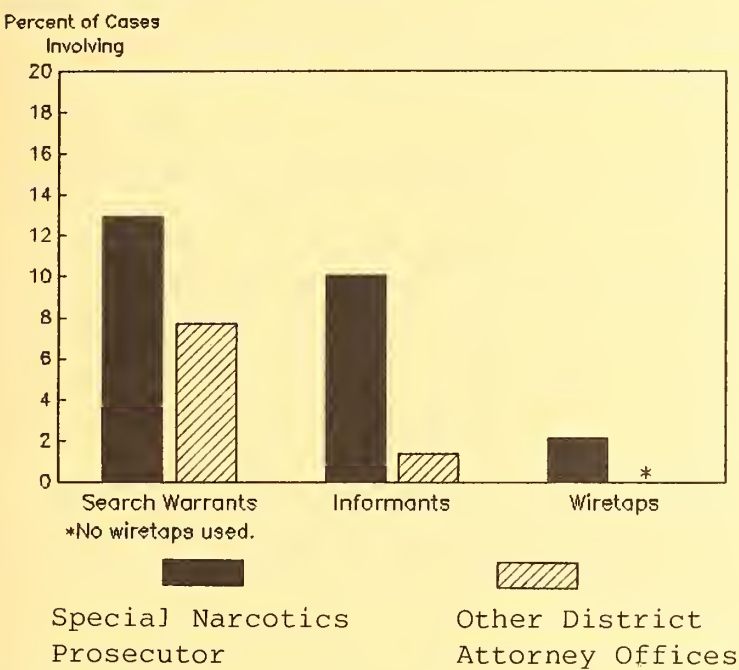
While there has been limited coordination between the Special Prosecutor and the other City District Attorney offices, the Special Prosecutor, the New York City Drug Enforcement Task Force, the federal Drug Enforcement Administration regional office and the two U.S. Attorney offices in New York City have had an ongoing relationship, sharing resources, information and responsibility for major narcotics cases. These law enforcement and prosecution agencies indicated that they had a close working relationship with the Special Prosecutor. The Special Prosecutor and the U.S. Attorney offices jointly prosecuted 295 cases during 1986 and 1987. Also, City Drug Enforcement Task Force officers were far more frequently involved in Special Prosecutor's cases (six percent) than in cases from the other offices (0.3 percent). Cases involving the City Drug Enforcement Task Force or the Drug Enforcement Administration regional office were the most serious and complex cases reviewed in the two samples.

Case Investigation and Development

The Special Prosecutor conducted more extensive investigations than did the other district attorneys. Chart S-1 indicates that Special Prosecutor cases more frequently involved search warrants (13 percent to eight percent), informants (ten percent to one percent) and wiretaps (2 percent to none) than the other City prosecutors' cases. The Special Prosecutor's cases were slightly more likely to involve buy or flash money (76 percent) than the other district attorneys' cases (72 percent); however, ten percent of Special Prosecutor's cases and only two percent of other district attorneys' cases involved over \$1,000 in buy or flash money. Overall, Chart S-2 reveals that 19 percent of the Special Prosecutor's cases and seven percent of the other prosecutors' cases involved sale or possession investigations. In buy and bust cases, the most common case in both samples, an undercover officer makes a drug purchase from a dealer and subsequently notifies a backup team to make the arrest. These cases usually involved under \$40 in buy money and were relatively simple cases to prosecute.

Chart S-1

Investigation Techniques Used by Prosecutor



Case Seriousness and Complexity

The Special Prosecutor's caseload included more serious narcotics cases than those of the other district attorney offices (Chart S-3). Fourteen percent of the Special Prosecutor's cases and five percent of the other offices' cases involved Class A felony indictment charges--the most serious Penal Law category. Nine percent of the Special Prosecutor's cocaine seizures and four percent of its heroin seizures involved amounts above one pound. The other offices seized above one pound in two percent of their cocaine seizures and in none of their heroin seizures.

We categorized the complexity of a case based upon the absence or presence of seven factors which led to cases with greater numbers of court appearances and court motions filed. Chart S-3 reveals that 81 percent of the Special Prosecutor's cases and 93 percent of other district attorneys' cases were of low complexity. The remaining cases were of medium or high complexity.

Chart S-2

Case Types by Prosecutor

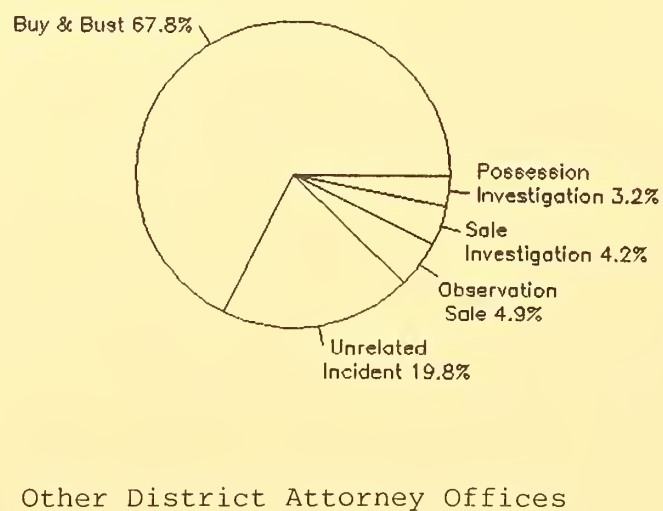
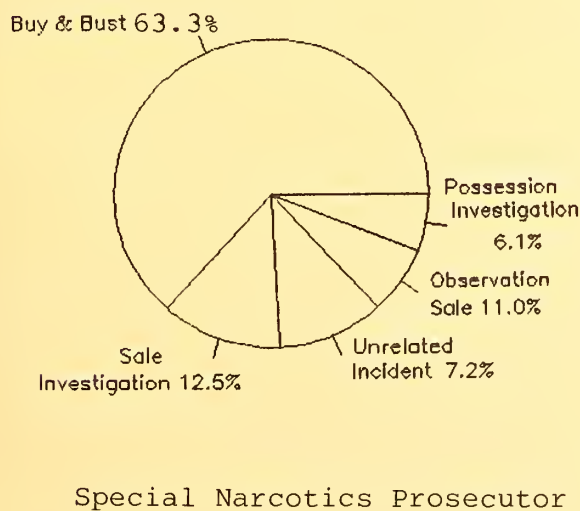
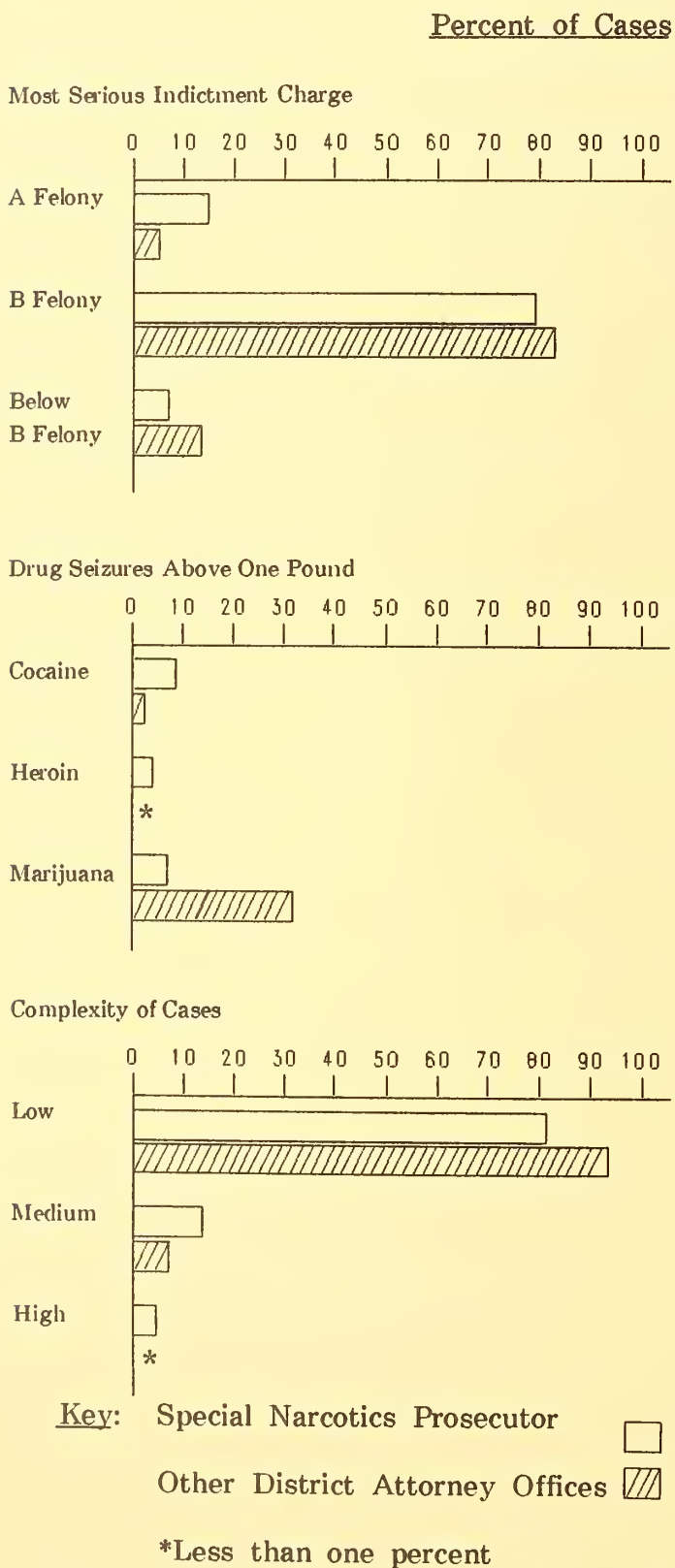


Chart S-3

Case Seriousness and Complexity
by Prosecutor



Five percent of the Special Prosecutor's cases were highly complex compared to less than one percent in the other district attorney offices. Of the Special Prosecutor's cases of high complexity, 33 percent involved wiretaps; 67 percent used search warrants; 92 percent had two or more defendants; and all involved informants and had Class A felony charges.

Jurisdiction of the Special Prosecutor's Caseload

The Special Prosecutor's caseload reflects its two components--its role as a citywide prosecutor and its prosecution of almost all New York County felony drug indictments. Ninety-two percent of the Special Prosecutor's cases involved only New York County while the remaining cases involved a wider jurisdiction. The Special Prosecutor's low complexity cases were almost all (99 percent) confined to New York County.

Given its citywide role, the Special Prosecutor's cases of medium and high complexity should approximate the citywide distribution of felony drug indictments. Thirty-eight percent of the City's 1986 felony drug indictments were filed in New York County. The proportion of New York County only cases among the Special Prosecutor's cases of high complexity (42 percent) parallels this. However, 70 percent of cases of medium complexity were New York County based, significantly higher than expected based upon the citywide distribution of felony drug indictments. Overall 63 percent of medium and high complexity cases were confined to New York County.

Case Workload

The Special Prosecutor's additional staff resources are partly justified by the increased staff required to prosecute their more complex caseload. We compared caseload per assistant district attorney (ADA) for the Special Prosecutor's cases of low complexity to ADA caseload for all cases handled by the Kings and Bronx District Attorney offices. Queens was not analyzed since it does not have a separate narcotics bureau.

During 1987, the Special Prosecutor (124 cases per ADA) had a slightly lower caseload than the Kings District Attorney's Office (136 cases per ADA) while Bronx averaged 181 cases per ADA. The Bronx ratio declines to 138 cases per ADA if end of the year rather than average staffing figures are used. Bronx and Kings ADAs are thus occupied with low-level cases and do not have the enhanced staffing available to the Special Prosecutor to prosecute more complex cases. While the Special Prosecutor's more complex caseload was disproportionately concentrated in New York County, Kings and Bronx staff had limited resources to handle complex cases within their respective counties.

Case Outcomes

The Special Prosecutor was intended to more expeditiously prosecute cases and remove narcotics violators from the community. To assess this, we compared case lengths, conviction rates and plea bargaining and sentencing records of the Special Prosecutor and the Bronx, Kings and Queens District Attorney offices.

Case Length and Conviction Rates

The Special Prosecutor disposed of cases from indictment to sentencing more expeditiously, taking approximately five months compared to six months for the other district attorney offices. Sixty-nine percent of the Special Prosecutor's completed cases and 57 percent of the other district attorneys' completed cases met the Chief Court Administrator's standard that felony cases be disposed of within six months.

The prosecutors had comparable conviction rates for all 1986 drug felony indictments ranging from 92 percent for the Special Prosecutor to 95 percent in Bronx County. Ninety-six percent of these convictions resulted from defendants' guilty pleas.

Plea Bargaining and Sentencing Statutes

Unless the defendant enters a plea to all the counts in the indictment, the prosecutor, the defendant and the court must agree to the terms and conditions of a guilty plea. Therefore

the prosecutor shares responsibility for pleas to reduced charges and sentences for those pleas.

State statute limits the extent to which felony defendants may plead to reduced charges and mandates State prison sentences for the most serious felony convictions and for repeat felony offenders. All defendants with previous felony convictions in the past ten years must plead to a felony charge and be sentenced as second felony offenders. With one exception, all second felony offenders and all persons convicted of Class A or B felony charges must be sentenced to State prison. Otherwise, except for some Class C narcotics convictions, a person pleading to his or her first felony conviction may receive a wide range of sentences including probation and jail. State prison sentences are for a minimum of one year while fixed sentences up to one year are served in a county or city jail.

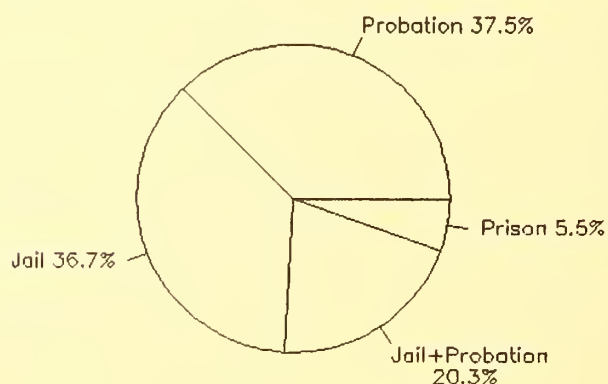
Plea Bargaining Records

The Special Prosecutor was less likely than the other district attorney offices to obtain pleas to the most serious indictment count or pleas involving prison sentences. Eight percent of the Special Prosecutor's plea agreements compared to 29 percent of the other prosecutors' plea bargains were to the top count. Thirty-eight percent of the Special Prosecutor's defendants and 46 percent of other offices' defendants entering pleas received a State prison term.

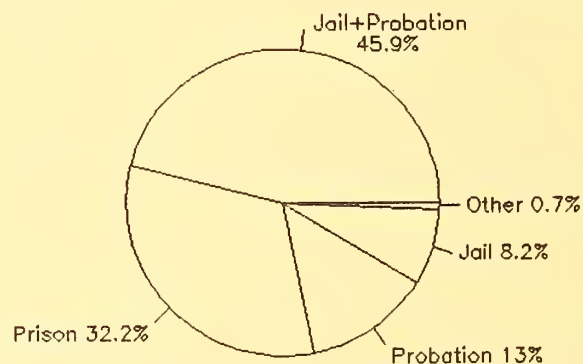
A review of pleas to Class B felony indictments (approximately four fifths of all pleas in both samples) highlights differences in plea bargaining practices. Chart S-4 presents the sentences resulting from plea bargains with first felony offenders under a B felony indictment. First felony offenders pleading to less than a B felony do not have to be sentenced to State prison. Five percent of the Special Prosecutor's cases and 32 percent of the pleas in the other offices resulted in prison sentences. Straight probation sentences were received in 38 percent of the Special Prosecutor's cases and 13 percent of the cases in the other district attorney offices. All second felony offenders under a B felony indictment who pled guilty received State prison terms with an average minimum of 26 months for the Special Prosecutor's cases and 33

Chart S-4

Sentences to First Felony Offenders
Pleas to B Felony Indictments



Special Narcotics Prosecutor



Other District Attorney Offices

months for the other district attorneys' cases. Case complexity had no relationship to the types of pleas negotiated by the prosecutors.

Prosecutors' Differences

The Special Prosecutor's staff indicated that the plea bargaining policies in the other district attorney offices had resulted in an excessive backlog of pending cases. As of December 1986, Bronx, Kings and Queens counties had 41 percent of felony cases pending over six months compared to 27 percent for New York County. They also stated that their policies are used to cultivate informants.

The Chief Administrative Judge indicated that individual district attorney plea bargaining policies had a significant impact on variation in case outcomes among the prosecutors.

Conclusions

The creation of a coordinated citywide force for the prosecution of felony narcotics cases in New York City has not been fully realized. Coordination among the other district attorney offices and the Special Narcotics Prosecutor has been informal. The Special Prosecutor handles narcotics cases of greater seriousness and complexity than the other district attorney offices. However, these cases are disproportionately concentrated in New York County rather than dispersed throughout the City. Also, for indictments of comparable seriousness, the Special Narcotics Prosecutor's plea bargaining practices led to lower proportions of prison sentences and greater use of straight probation sentences than the other district attorney offices.

Staff Findings and Recommendations for Comment

Chapter 58 of the Laws of 1980 requires heads of audited agencies to report within 180 days of receipt of the final program audit to the Chairman of the Legislative Commission on Expenditure Review and the Chairmen and the Ranking Minority members of the Senate Finance Committee and the Assembly Ways and Means Committee on what steps have been taken in response to findings and conclusions and where no steps were taken, the reasons therefor.

1. The Office of the Special Narcotics Prosecutor was charged with coordinating citywide narcotics prosecution and assumed responsibility for prosecuting almost all New York County felony drug indictments. While the Special Prosecutor has handled a more serious and complex caseload than the other district attorneys, the potential benefits of a centralized prosecution force have not been fully realized because of coordination and resource allocation problems. The findings and recommendations below discuss the Special Prosecutor's two roles separately.

Citywide Role

- a. There is no formal coordination between the Special Prosecutor and the other district attorney offices. (See p. 1-2).

The Special Prosecutor and the five district attorney offices should jointly develop a formal mechanism to coordinate their narcotics prosecution efforts. Such coordination should include sharing of case information and resources for investigations and involve updating the original plan for the Special Prosecutor's operations.

- b. The Special Prosecutor's cases of medium complexity and its buy money expenditures were disproportionately concentrated in New York County. (See pp. 18-20).

The State Division of Criminal Justice Services (DCJS) should develop goals and an appropriate reporting mechanism to assure that the Special Prosecutor broadens the jurisdiction of its more complex cases.

Role as New York County Prosecutor

- c. The Special Prosecutor's staff based in New York County comprised 81 percent of the program's legal staff and 87 percent of the support staff as of December 1987. State Special Narcotics Program monies therefore support a larger proportion of New York County's felony drug workload than they do for Bronx, Kings and Queens. (See pp. 2-3).

DCJS should reallocate the State monies used for prosecuting New York County cases to assure an equitable distribution of staff among the district attorney offices. Such reallocation should take into account in-kind services provided to the Special Prosecutor by the New York County District Attorney to prosecute cases outside New York County. Additional staff relocated to the other district attorney offices should be used to develop more serious and complex cases.

New York City should assume responsibility for replacing the State funding reallocated from New York County.

Through improved coordination and resource reallocations, New York City prosecutors will be better able to contend with the dramatic growth in narcotics trafficking throughout the City.

2. The Special Prosecutor's plea bargaining policies resulted in lower proportions of first felony offenders under a Class B

felony indictment receiving State prison sentences than the other district attorney offices. These defendants were also more likely to receive a probation sentence in the Special Prosecutor's office than in the other district attorney offices. Special Prosecutor staff stated that the plea bargaining policies by the other district attorneys had resulted in excessive backlogs of felony cases. Statistics show a greater backlog in the other offices as of December 1986. They also indicated that their plea

policies are used to cultivate informants. (See pp. 26-30).

3. Since 1984-85, the Special Prosecutor has used \$212,008 of State buy money for payments to informants and \$19,380 for operational expenses of narcotics investigations, purposes not permitted under the State buy money appropriation. Its semiannual buy money reports have not included a required detailed monthly accounting. (See p. 4).

TABLE OF CONTENTS

	<u>Page</u>
Summary and Conclusions	S-1
Foreword	ii
Chapter	
I Program Background and Legislative Intent	1
Legislative Intent	1
Program Staffing and Finances	2
Audit Scope and Methodology	5
Chapter Summary	5
II Case Origins and Development	7
Agencies Involved in Narcotics Cases	7
Case Investigation and Development	10
Case Types	14
Chapter Summary	14
III Case Seriousness and Complexity	15
Case Seriousness	15
Case Complexity	15
Jurisdiction of the Special Prosecutor's Caseload	18
Case Workload Analysis	21
Chapter Summary	22
IV Case Outcomes	23
Case Length	23
Conviction Rates	23
Plea Bargaining and Sentencing	24
Chapter Summary	30
Footnotes	31
Appendix	
A Audit Scope and Methodology	32
B Plea Bargaining and Sentencing Statutes	35
C Agency Responses and LCER Rebuttal	38

FOREWORD

The Legislative Commission on Expenditure Review (LCER) was established by Chapter 176 of the Laws of 1969 as a permanent agency for among other duties "the purpose of determining whether any such department or agency has efficiently and effectively expended funds appropriated by the Legislature for specific programs and whether such departments or agencies have failed to fulfill the legislative intent." This program audit, Office of the Special Narcotics Prosecutor, is the 183rd staff report.

The Legislature established the Special Narcotics Program in 1971 to support felony narcotics prosecution in New York City through a coordinated effort by the New York City District Attorneys. The Office of the Special Narcotics Prosecutor was established to implement this coordinated approach.

LCER found that the creation of a coordinated citywide force for the prosecution of felony narcotics cases in New York City has not been fully realized. Coordination between the Special Narcotics Prosecutor based in New York County and the other City district attorney offices has been informal. The Special Prosecutor handles narcotics cases of greater seriousness and complexity than the other district attorney offices. However, these cases are disproportionately concentrated in New York County.

Formal coordination among City narcotics prosecutors is essential to contend with the dramatic growth in narcotics trafficking. The State Division of Criminal Justice Services (DCJS) should reallocate the State monies for prosecuting New York County cases to assure an equitable distribution of staff among the district attorney offices.


Appreciation is expressed to the staff at DCJS, the Office of the Special Narcotics Prosecutor and the Bronx, Kings and Queens District Attorney offices for their cooperation during the audit. Each agency was given the opportunity to respond to the audit draft. Appendix C contains the responses of DCJS, the Kings District Attorney office, the Office of the Special Narcotics Prosecutor and the LCER rebuttal to the Special Narcotics Prosecutor's response.

The audit was conducted by David Rowell, Project Manager and Caroline Flynn. Gary Simpson and Randi Michelman assisted with field work. Stuart Graham supervised quality control. Karen McNamara handled layout and production. Word processing and graphics were provided by Dawn Hewitt. Overall supervision was the responsibility of the Acting Director.

The Commission is interested in hearing from the readers of its audits. Any comments or suggestions should be sent to the Acting Director at the address listed on the inside cover of this audit.

The law mandates that the Chairmanship of the Legislative Commission on Expenditure Review alternate in successive years between the Chairman, Senate Finance Committee and the Chairman, Assembly Ways and Means Committee. Senator Tarky Lombardi, Jr. is Chairman for 1989 and Assemblyman Saul Weprin is Vice Chairman.

March 17, 1989


James J. Haag
Acting Director

I PROGRAM BACKGROUND AND LEGISLATIVE INTENT

Recent dramatic increases in illegal drug trafficking are a major concern in New York State and throughout the nation. A June 1987 federal report documenting the foreign and domestic sources of illicit drugs noted that cocaine was readily available in virtually all major metropolitan areas during 1985 and 1986.¹ "Crack," a form of cocaine processed for smoking, has been a major element of the upsurge in cocaine use in New York City and elsewhere.² Five laboratories converting cocaine for street distribution were seized in New York State during 1985.³ The number of felony drug indictments in New York City has skyrocketed from 5,465 in 1983 to 18,757 in 1987, an increase of 243 percent.

Recent concerns about increases in drug trafficking parallel similar sentiments of public officials in the early 1970s. In 1971, the Legislature found that "an emergency of grave dimensions exists in narcotics law enforcement in the city of New York"⁴ which existing efforts had not stemmed successfully. To remedy the situation, the Legislature approved the creation of a Special Narcotics Program to augment the citywide prosecution of felony narcotics cases. In approving the legislation, Governor Nelson A. Rockefeller stated that the "efficient and skillful prosecution of felony narcotics cases will help to remove more narcotics peddlers from our streets, deter professional drug traffickers and stem the flow of drugs into our communities."⁵ The central element of that program was the creation of the Office of the Special Narcotics Prosecutor. This audit assesses the role of the Special Narcotics Prosecutor in prosecuting felony drug indictments in New York City.

Legislative Intent

Chapter 462 of the Laws of 1971 authorized the creation of separate court parts and a separate prosecution system in New York City to reduce an extensive backlog of narcotics cases and thereby stem the distribution of illegal drugs. The legislation provided that at least 12 special court parts would be established in the Supreme Court for the prosecution of felony narcotics cases.

Under Section 177-c of the Judiciary Law, the five New York City district attorneys were charged with planning the development of a centralized prosecution staff headed by an assistant district attorney who became known as the Special Narcotics Prosecutor. The statute required that the plan cover the establishment of standards, administrative policies, and procedures to govern the Office of the Special Narcotics Prosecutor's operations. The Special Narcotics Prosecutor was empowered to impanel grand juries with citywide jurisdiction over felony narcotics cases and to provide a coordinated approach to narcotics prosecution in New York City.

A December 1987 draft report by the State Division of Criminal Justice Services (DCJS) indicated that the creation of a centralized force coordinating narcotics prosecution citywide was never fully realized. The original district attorneys' plan established a central prosecution office to work with five central court parts in New York County and decentralized offices in New York, Bronx, Kings and Queens counties to prosecute cases in seven decentralized parts. No office was established in Richmond County. The plan circumscribed the Special Narcotics Prosecutor's powers to oversee and coordinate narcotics prosecutions:

--The Special Prosecutor had authority to manage prosecutions in the centralized parts but only to coordinate prosecutions in the decentralized parts;

- The individual New York City district attorneys had the power to appoint the legal staff to the centralized prosecution office and all staff in the decentralized offices; and
- The Special Prosecutor needed the approval of the five district attorneys to adopt policies, procedures and standards for the prosecution of narcotics cases.

The New York City district attorneys never revised the plan to account for the merger of the New York City Supreme Court parts into the State court system or for changes in drug trafficking patterns. The two decentralized court parts in New York County were merged with the central parts in November 1972 making the central office of the Special Prosecutor responsible for prosecuting almost all drug felony indictments in New York County.

DCJS reported that the operations of the central and decentralized offices had never been formally coordinated. The central office was not routinely apprised of cases being prosecuted by the decentralized offices nor did it collect and analyze case information from those offices in order to discern citywide drug trafficking patterns. No citywide policies on issues such as plea bargaining were formulated. Staff assigned to the decentralized offices work as personnel of their respective district attorney offices and any coordination with the central office was limited. When discussing the DCJS findings with LCER staff, the Special Prosecutor stated that the presence of independently elected district attorneys contributed to the lack of formal coordination. The Queens District Attorney in his response to the DCJS report indicated that the Special Prosecutor should be more accountable to each district attorney for his office's actions. The current working relationships among the Special Prosecutor, the other City district attorney offices and other local, State and federal law enforcement and prosecution agencies are described in Chapter II.

Program Staffing and Finances

The Special Narcotics Program was originally financed through a \$7.5 million federal grant supplemented by \$2.5 million in State and New York City funds. Since 1984-85, annual State appropriations have grown slightly from \$3.9 million to \$4.2 million in 1988-89. These amounts fund the Office of the Special Narcotics Prosecutor and supplemental legal defense, probation and correctional services to facilitate the processing of felony drug indictments. The Legislature also appropriated \$750,000 annually from 1984-85 to 1987-88 for the Special Prosecutor to use as buy money to purchase controlled substances in drug trafficking investigations. Special Prosecutor and buy money expenditures comprised 75 percent of 1987-88 total State expenditures as shown in Table 1.

Staff for the prosecution of narcotics cases has been allocated principally to the central Special Prosecutor office. Table 2 shows that from November 1973 to December 1987, central legal staff grew by 250 percent compared to a 20 percent growth in the decentralized Bronx, Kings and Queens offices. Over that period, total staffing declined by 22 percent for the decentralized offices and rose by 128 percent in the central office. The central office had 81 percent of the legal staff and 87 percent of the support staff as of December 1987. Since the Special Prosecutor is responsible for prosecuting almost all New York County drug felony indictments, Special Narcotics Program funds have supported a larger proportion of the New York County felony drug workload than they have for Bronx, Kings and Queens counties.

Table 1

Special Narcotics Program
State Expenditures
1987-88

<u>Program Component</u>	<u>Amount</u>	<u>Percent</u>
Special Narcotics Prosecutor	\$ 2,882,162	59.8
Defense	583,594	12.1
Corrections	485,145	10.1
Probation	117,199	2.4
State Buy Money	<u>750,000</u>	<u>15.6</u>
Total	\$ 4,818,100	100.0

Source: LCER data request to the State Division
of Criminal Justice Services, August 1988.

Table 2

Special Narcotics Prosecutor Staffing
November 1973 and December 1987

<u>Position</u>	<u>Central Office</u>			<u>Decentralized Offices^a</u>		
	<u>1973</u>	<u>1987</u>	<u>Percent Change</u>	<u>1973</u>	<u>1987</u>	<u>Percent Change</u>
Assistant District Attorneys	22	77	250.0	15	18	20.0
Support Staff ^b	<u>52</u>	<u>92</u>	<u>76.9</u>	<u>26</u>	<u>14</u>	<u>(46.2)^c</u>
Total	74	169	128.4	41	32	(22.0)

^aDecentralized positions include Special Narcotics Program staff in Bronx, Kings and Queens.

^bIncludes all other staff including professionals, administrative and clerical personnel.

^cNegative changes indicated by parentheses.

Source: For 1973 data, DCJS, Program Review Report: New York City Office of the Special Narcotics Prosecutor, December 1987, pp. 13,14; for 1987 data, LCER data request to the Office of the Special Narcotics Prosecutor as of December 31, 1987.

Table 3 presents the Office of the Special Prosecutor's combined State and City expenditures from 1984-85 to 1987-88, excluding the State buy money account. While expenditures have increased from \$5.0 million to \$8.1 million, the State share has declined from 55 percent to 36 percent. Personnel, the largest single cost, accounted for 78 percent of 1987-88 expenditures. In 1987-88, \$553,145 or seven percent of expenditures, was disbursed from a confidential fund supported by State and City funds to purchase controlled substances, pay informants and cover other operational expenses of narcotics investigations.

Table 3

Office of the Special Narcotics Prosecutor
Expenditures by Revenue Source*
1984-85 to 1987-88

<u>Fiscal Year</u>	<u>State</u>		<u>City</u>		<u>Total</u>
	<u>Amount</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>	
1984-85	\$ 2,720,416	54.6	\$ 2,263,750	45.4	\$ 4,984,166
1985-86	2,826,086	39.1	4,406,505	60.9	7,232,591
1986-87	2,882,162	35.9	5,155,399	64.1	8,037,561
1987-88	2,882,162	35.6	5,223,771	64.4	8,105,933

* Excludes State buy money appropriation. State expenditures include only expenditures from the Special Narcotics Prosecutor's share of State appropriations as noted in Table 1.

Source: For 1984-85 and 1985-86, DCJS Fiscal Review of Office of the Special Narcotics Prosecutor, December 1987, Exhibits A and B; for 1986-87 and 1987-88, LCER data request to the Office of the Special Narcotics Prosecutor, January and June 1988.

The State buy money appropriation may be used only for the purchase of controlled substances. However, from 1984-85 to 1987-88, the Special Prosecutor expended \$212,008 for payments to informants and \$19,380 for investigative operational expenses from that account. While there may be a substantive justification for these expenditures, they do not fall within the requirements of the appropriation. The Office of the City Comptroller was required to submit semiannual reports to the Legislature on the use of the buy money. Such reports were to include detailed monthly accountings of State buy money funds. The semiannual reports submitted by the Special Prosecutor to fulfill this requirement did not include the detailed monthly accounting. However, the DCJS draft report concluded that the management of the State buy money account and the other confidential fund "was, on the whole, very good."⁶

The Special Prosecutor also has received \$2,340,268 since 1984 under the Federal Assets Forfeiture Sharing Program. State and local prosecutors assisting in successful federal narcotics investigations may receive a share of assets forfeited by the apprehended drug traffickers. Any funds received under this program must be used to supplement the prosecutor's existing resources and be used only for nonpersonal service expenditures. The Special Prosecutor had expended \$551,341 of these funds as of August 1, 1988. Seventy-six percent of these expenditures were for case investigation activities.

Audit Scope and Methodology

This audit assesses the Special Prosecutor's citywide role in the prosecution of felony narcotics cases in New York City. Since the Special Prosecutor has citywide jurisdiction over felony narcotics cases and has received significant State support, we sought to assess whether the goal of a centralized force to coordinate felony narcotics prosecution has been realized. The audit focuses on the effective and efficient prosecution of felony narcotics cases, as measured by the types and jurisdictions of cases prosecuted by the Special Prosecutor and by case outcomes including case lengths, conviction rates and plea bargaining records. The Special Prosecutor's impact on stemming the flow of drugs was not directly assessed. Since the central and decentralized Special Prosecutor offices have operated independently, references to the Special Prosecutor will cover only the central office in New York County unless otherwise indicated. The Special Prosecutor's operations are compared to the three district attorney offices which receive Special Narcotics Program funds--Bronx, Kings and Queens. Richmond County did not receive Special Narcotics Program funds and therefore was not included in the comparison.

Chapter II reviews the origins and development of narcotics cases for the four prosecutors. In Chapter III, the seriousness and complexity of the four prosecutors' felony drug indictment workloads are analyzed in conjunction with the staffing available to prosecute them. Chapter IV details the prosecutors' plea bargaining and sentencing practices.

Sources of information for this audit were:

- A review of two samples of 1986 drug felony indictments, one from the Special Prosecutor and one from the Bronx, Kings and Queens District Attorney offices;
- Data requests to the four prosecutors concerning their staffing, workloads and relationships with other prosecution and law enforcement agencies;
- Data requests to DCJS and the State Office of Court Administration on case processing and sentencing information for the Special Prosecutor and the other three district attorney offices; and
- Interviews with staff of local, State and federal narcotics law enforcement and prosecution agencies in New York City, and with the New York City administrative judges.

The methodology for the selection of two samples of 1986 drug felony indictments is discussed in Appendix A.

Chapter Summary

● The Special Narcotics Program was designed to create a centralized prosecution force to coordinate prosecution of felony narcotics cases citywide.

● Contrary to legislative intent, no formal coordination has existed between the central Special Prosecutor office based in New York County and the decentralized offices in Bronx, Kings and Queens. The decentralized staffs have operated as part of their respective district attorney offices.

● As of December 1987, 81 percent of the Special Prosecutor legal staff were allocated to its central office. Central office legal staff grew 250 percent since 1973 compared to a 20 percent growth for the decentralized legal staffs. Since the central office processes almost all New York County felony drug indictments, the Special Narcotics Program funds a greater proportion of the New York County felony drug indictment workload than they do for Bronx, Kings and Queens.

● Since 1984-85, the Special Prosecutor has used \$212,008 of State buy money for payments to informants and \$19,380 for operational expenses of narcotics investigations, purposes not provided for under the State buy money appropriations. Semiannual buy money reports submitted by the Special Prosecutor have not included a required detailed monthly accounting.

● The Special Prosecutor has received \$2,340,268 through the Federal Assets Forfeiture Sharing Program since 1984. As of August 1, 1988, \$551,341 of these funds had been expended.

II CASE ORIGINS AND DEVELOPMENT

District attorneys in New York City stand at a midway point in the criminal justice system. Law enforcement agencies are responsible for the initial apprehension and charging of suspects though district attorneys may play a role in long-term investigations. Once a suspect has been arrested, the district attorney is responsible for the management of the criminal prosecution in Criminal and Supreme Courts, if necessary. The relationships among the federal, State and local law enforcement and prosecution agencies help determine which agency will prosecute a defendant.

To prepare for the Chapter III discussion on the nature of the Special Prosecutor's caseload compared to that of the other district attorneys, this chapter reviews how felony narcotics cases are developed including:

- The principal law enforcement and prosecution agencies involved in the processing of narcotics cases in New York City;
- The relationships among these agencies for case referral and prosecution;
- The investigative techniques used to develop narcotics cases; and
- A fivefold typology of narcotics cases in New York City.

Agencies Involved in Narcotics Cases

An array of federal, State and local agencies enforce narcotics laws and prosecute narcotics offenders in New York City. Cooperation among these agencies and coordination of efforts are important to assure the most effective and efficient use of resources.

Exhibit I describes the principal law enforcement agencies dealing with narcotics crime in New York City. The Organized Crime Control Bureau (OCCB) of the New York City Police Department (NYCPD) is the principal local enforcement agency seeking to apprehend all offenders, from low level street drug dealers to high level drug traffickers. The New York City Drug Enforcement Task Force established in 1970 includes officers from State, federal and City enforcement agencies and was designed to develop a coordinated approach to apprehension of middle and high level drug traffickers. The federal Drug Enforcement Administration (DEA) participates in the Task Force and also works with other federal agencies on narcotics enforcement through its regional office. Its Unified Intelligence Division gathers information on drug trafficking for law enforcement agencies in the New York City area.

Exhibit II describes the four principal narcotics prosecution agencies in New York City. Two U.S. Attorney offices -- the Eastern and Southern District -- serve New York City. Each office has a narcotics division to prosecute major cases and a general crime unit for prosecution of low level narcotics violators. Two of the three major New York City District Attorney offices outside New York County -- Bronx and Kings -- have separate narcotics bureaus while Queens County does not.

Relationships among Law Enforcement and Prosecution Agencies

We found that the nature and extent of the relationships among the above agencies involved in narcotics enforcement and prosecution in New York City varied widely. Law enforcement agencies served as conduits affecting the types and number of cases handled by each prosecutor.

Prosecution Agencies. As Chapter I indicated, DCJS found that cooperation between the Special Prosecutor and the Bronx, Kings and Queens District Attorney offices in New York City was limited. During 1986 and 1987, the Special Prosecutor jointly prosecuted only two cases with one of those three offices.

The Special Prosecutor has a working relationship with the U.S. Attorneys offices serving New York City. While the Bronx, Kings and Queens District Attorney offices jointly investigated seven cases with the U.S. Attorney offices during 1986 and 1987, the Special Prosecutor had 76 cases with the Eastern District and 219 cases with the Southern District. The Special Prosecutor and each U.S. Attorney office hold joint meetings to discuss how these cases should be handled.

Exhibit I

Principal Narcotics Enforcement Agencies New York City

<u>Agency</u>	<u>Nature of Role</u>
New York City Police Department	
Precinct	Usually not involved in undercover cases; makes arrests as adjunct to patrol work.
Organized Crime Control Bureau	Principal local enforcers of narcotics laws; deals with all levels of offenders; offices predominantly county based.
New York City Drug Enforcement Task Force	Formed in 1970, consists of law enforcement personnel from NYCPD, the State Police and the DEA; organized into 12 groups to investigate and apprehend middle and high level drug traffickers.
Drug Enforcement Administration	Federal agency involved in enforcement through its regional office and participation in Drug Enforcement Task Force; three of its groups work with federal Organized Crime Drug Enforcement Task Force (OCDETF); Unified Intelligence Division provides information on drug trafficking to enforcement agencies.
Federal Bureau of Investigation	Role began in 1982 as supplement to DEA's efforts to apply expertise in organized crime to drug trafficking; works on federal OCDETF cases.

Source: LCER staff interviews with representatives of above agencies, March to June 1988.

Exhibit II

Principal Narcotics Prosecution Agencies
New York City

<u>Agency</u>	<u>Nature of Role</u>
Office of the Special Narcotics Prosecutor	Intended to coordinate citywide prosecution of narcotics cases; has citywide jurisdiction.
Other City District Attorney Offices	Bronx, Kings and Queens receive support from Special Narcotics Program; all but Queens have narcotics bureau.
U.S. Attorney Offices	Two offices serve City; each has narcotics division to handle larger and more complex cases and general crimes unit to prosecute street level cases.
State Organized Crime Task Force	Unit of State Attorney General with an office in White Plains serving New York City; one team of prosecutors concentrates solely on narcotics cases.

Source: LCER staff interviews with representatives of above agencies, March to June 1988.

Prosecution and Law Enforcement Agencies. As Table 4 indicates, OCCB and precinct officers of the NYCPD together were involved in the large majority of the cases for the Special Prosecutor and for the other district attorneys. OCCB officers were involved in approximately two-thirds of both samples' cases while the precinct officers participated in 26 percent of the Special Prosecutor's cases and 23 percent of the other district attorneys' cases.

NYCPD Drug Enforcement Task Force officers or DEA agents from the Task Force or the Regional Office were more frequently involved in cases handled by the Special Prosecutor rather than those prosecuted by the other offices. NYCPD Task Force officers were involved in six percent of the Special Prosecutor's cases and 0.3 percent (one case) of the other offices' cases. Similarly, DEA agents participated in six percent of the Special Prosecutor's caseload and two percent of the other prosecutors' felony cases. Cases involving NYCPD Task Force officers or DEA agents had a greater proportion of Class A felony indictment charges -- the most serious category of Penal Law -- and larger amounts of drugs seized than cases brought by NYCPD precinct or OCCB officers.

Interviews with the Special Prosecutor, the U.S. Attorney offices, the DEA regional office and the New York City Drug Enforcement Task Force reflected ongoing cooperation among these agencies in sharing information and resources to develop cases. These law enforcement and prosecution agencies indicated that they had a close professional working relationship with the Special Prosecutor. The Task Force-Special Prosecutor relationship

Table 4

Law Enforcement Agencies Involved In Cases
By Prosecutor

<u>Agency</u>	<u>Special Prosecutor Percent of Cases*</u>	<u>Other Offices Percent of Cases*</u>
DEA Agents	6.4	1.7
State Police	2.5	--
NYCPD Task Force	6.1	0.3
NYCPD OCCB	66.4	71.1
NYCPD Precinct	26.4	23.3
Other Agencies	4.3	8.4
N=	(280)	(287)

*Percentages add up to over 100 percent because more than one law enforcement agency may be involved in a case. Numbers in parentheses indicate the number of cases upon which the percentages are based.

Source: LCER review of two samples of 1986 drug felony indictments from the Office of the Special Narcotics Prosecutor and from the Bronx, Kings and Queens District Attorney offices, April to June 1988.

particularly has grown over the past five years. In 1983, the Task Force filed 41 percent of its indictments in State court; that proportion rose to 64 percent in 1987. As noted in Table 5, the Task Force expended 69 percent of the Special Prosecutor's buy money in 1987. The Task Force also used 39 percent of the Special Prosecutor's flash money and 72 percent of its other investigative resources. This last category includes buy money recovered, buy money allocated but not expended and expenditures for information and other operational needs of investigations.

In summary, the Special Prosecutor's principal relationships for its most serious and complex cases were with the U.S. Attorney offices, the New York City Drug Enforcement Task Force and the DEA regional office. The other New York City District Attorneys offices had few cases with these offices or with the Special Prosecutor's office.

Case Investigation and Development

Among the major techniques used by law enforcement agencies in the investigation and apprehension of narcotics offenders are:

- The use of buy or flash money: Buy money may be used to purchase drugs from a dealer or obtain intelligence from an informant. Apprehension of

higher level drug traffickers usually requires either multiple purchases or purchases of large amounts of drugs. Flash money is displayed by undercover officers but not used to purchase drugs. Its purpose is to gain credibility with middle or high level dealers.

--Informants: Police officers receive complaints about drug dealing from individuals in a neighborhood which may lead to investigations, or enforcement and prosecution agencies may have informants who provide intelligence about the nature and extent of drug dealing in a particular location or by a specific organization. Informants may receive money for their services or may receive a more lenient plea offer for their cooperation if they are facing drug or other criminal charges.

--Search warrants: Search warrants in narcotics cases are usually sought at the culmination of a case in order to seize drugs and other evidence of drug trafficking. To establish the basis for judicial approval of a warrant, undercover officers may have made several buys at a particular location and/or used intelligence about drug trafficking obtained from an informant.

--Wiretaps or pen registers: Wiretaps -- interception of telephone conversations and pen registers -- records of outgoing telephone calls made -- indicate a high level narcotics investigation. Extensive prior investigation must be done to justify judicial approval to use these devices.

Table 5

Allocation of Investigative Resources, By Agency
Special Narcotics Prosecutor
1987

<u>Agency</u>	<u>Expended Buy Money^a</u>		<u>Flash Money</u>		<u>Other Resources^b</u>	
	<u>Amount</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>
NY County DA	\$ 66,200	9.2	\$ 467,500	15.4	\$ 26,006	2.8
Other DA's	31,050	4.3	37,000	1.2	3,000	0.3
DEA Task Force	497,455	68.9	1,185,000	39.1	679,966	72.4
DEA Region	21,100	2.9	--	--	11,850	1.3
NYC Police	42,500	5.9	743,000	24.5	173,160	18.4
FBI Task Force	--	--	45,000	1.5	--	--
State Police	<u>63,420</u>	<u>8.8</u>	<u>552,000</u>	<u>18.2</u>	<u>44,641</u>	<u>4.8</u>
Total	\$ 721,725	100.0	\$ 3,029,500	99.9	\$ 938,623	100.0

^aIncludes buy money from the Special Prosecutor's State, Confidential and federal assets forfeiture accounts.

^bIncludes buy money allocated but not used, recovered buy money and investigative expenditures including informant payments.

Source: LCER data request to the Office of the Special Narcotics Prosecutor, July 1988.

Table 6 displays the use of these techniques. The Special Prosecutor was slightly more likely (76 percent to 72 percent) to use buy or flash money than the other offices. While \$20 was the median amount of buy money used for both sets of prosecutors, ten percent of the Special Prosecutor's cases involved over \$1,000 in buy or flash money compared to only two percent for the other district attorney offices.

Table 6

Investigative Techniques Used
By Prosecutor

<u>Technique</u>	<u>Special Prosecutor Percent of Cases</u>	<u>Other Offices Percent of Cases</u>
Search Warrant	12.9	7.7
Informants	10.0	1.4
Informants Testify	0.7	--
Wiretaps or Pen Registers	2.1	--
Buy or Flash Money	76.4	72.4
N=	(280)	(286)
Cases Using Buy or Flash Money Over \$1,000	9.8	1.5
N=	(214)	(205)

Source: LCER review of two samples of 1986 drug felony indictments from the Office of the Special Narcotics Prosecutor and from the Bronx, Kings and Queens District Attorney offices, April to June 1988.

The other three techniques, search warrants, informants, and wiretaps or pen registers, were used far less frequently. General complaints about drug dealing in a neighborhood were not categorized as involving an informant. The Special Prosecutor's cases more frequently included search warrants (13 percent) than did the other offices' cases (eight percent). Two percent of the Special Prosecutor's cases involved a wiretap or pen register while ten percent included an informant. In contrast, only one percent of the other district attorneys' cases involved an informant while none used a wiretap or pen register.

Exhibit III

Types of Felony Narcotics Cases By Prosecutor

<u>Type of Case</u>	<u>Characteristics</u>	<u>Special Prosecutor Percent of Cases</u>	<u>Other Offices Percent of Cases</u>
Buy and Bust	Most common type of case; usually involves sale by dealer to undercover officer with an arrest by backup team; generally involves under \$40 of buy money; cases usually simple to prosecute.	63.3	67.8
Observational Sale	Usually involves precinct officers observing completion of drug sale followed by arrest; no buy money involved; cases usually simple to prosecute.	7.2	4.9
Unrelated Incident	Usually involves precinct level officers arresting suspect on possession while investigating other crimes such as a burglary; no buy money involved; cases usually simple to prosecute.	11.0	19.8
Drug Sale Investigation	Usually involves City OCCB officers with DEA Task Force officers involved in a significant minority of cases; an average of \$5,063 of buy or flash money is used; almost all cases involve two or more defendants; over half involve search warrants or Class A felony charges; 44 percent involved informants; four of the six wiretaps occurred in these cases; usually somewhat too very complex to prosecute.	12.5	4.2
Drug Possession Investigation	Usually involves City OCCB officers with DEA agents and precinct officers participating in a minority of these cases; involves an average of \$9,985 in buy or flash money; cases usually involve two or more defendants, search warrants and Class A felony; informants involved in about one third of these cases; usually somewhat to very complex to prosecute.	6.1	3.2
Total		100.1	99.9
N=		(264)	(283)

Source: LCER review of two samples of 1986 drug felony indictments from the Special Narcotics Prosecutor and from the Bronx, Kings and Queens District Attorney offices, April to June 1988.

Case Types

Exhibit III describes five case types. Three of the types -- buy and bust, observational sales and unrelated incidents -- are comparatively simple cases to prosecute while sale and possession investigation cases are more complex.

Buy and bust cases, the most common case in both samples, are street level cases where an undercover officer purchases a small amount of drugs from a dealer and a backup police team arrests the dealer. Such cases rarely involved search warrants or informants and seldom resulted in Class A felony indictments. New York City OCCB officers were involved in almost 90 percent of these cases while DEA agents or NYCPD Task Force officers were rarely involved.

Drug sale investigations required a greater investment of law enforcement and prosecution resources. Almost all of these cases had two or more defendants. Slightly more than half had a Class A felony indictment charge and also used a search warrant. Furthermore informants were involved in over two fifths of these cases. Finally, an average of \$5,063 in buy or flash money was used in these investigations. While OCCB officers participated in almost two thirds of drug sale investigation cases, NYCPD Task Force officers or DEA agents participated in just under one quarter of these investigations -- their most extensive involvement among the case types.

Drug possession investigation cases usually included at least two or more defendants, a search warrant and a Class A felony indictment charge. Informants participated in almost one third of these cases.

The Special Prosecutor had a slightly lower proportion of buy and bust cases (63 percent) than the other district attorney offices (68 percent). Nineteen percent of the Special Prosecutor's cases were sale or possession investigations compared to seven percent for the other offices.

Chapter Summary

- The Special Prosecutor's principal relationships for its most serious and complex cases were with the U.S. Attorney offices, the New York City Drug Enforcement Task Force and the DEA Regional Office. The other New York City District Attorneys had few cases with these offices or with the Special Prosecutor.

- The Special Prosecutor's cases involved greater amounts of buy or flash money than those from the other prosecutors and also more frequently used wiretaps or pen registers, search warrants and informants.

- Almost two thirds of cases from both samples were buy and bust cases, relatively simple cases to prosecute. Sale and possession investigation cases were 19 percent of the Special Prosecutor's cases and seven percent of the other prosecutors' caseloads.

III CASE SERIOUSNESS AND COMPLEXITY

The Special Prosecutor was granted citywide jurisdiction to prosecute felony narcotics cases and has received greater State support than the other district attorney offices. This chapter addresses whether the Special Prosecutor's caseload is consistent with the above role by reviewing these questions:

1. Does the Special Prosecutor have a more serious felony narcotics caseload than the other district attorney offices?
2. Are the Special Prosecutor's cases generally more complex to prosecute than cases prosecuted by the other district attorneys?
3. Does the Special Prosecutor's caseload reflect its citywide jurisdiction over felony narcotics cases?
4. How do the Special Prosecutor's staff resources for the prosecution of less complex cases compare to those available in the other district attorney offices?

Case Seriousness

We measured the seriousness of a case by the highest charge in the indictment and the amount of drugs seized by law enforcement agencies. Penal Law has five classes of felonies -- A, B, C, D and E -- ranging from the most to the least serious. Class A felonies are subdivided into A-I and A-II categories. Class A felonies represent serious cases since a seller of any amount of narcotics can be charged with a Class B felony under Article 220 of the Penal Law. In fact, 69 percent of the indictments reviewed had a Class B felony sale count as its most serious charge.

Table 7 reveals that the Special Prosecutor's caseload involved more serious indictments than the other district attorney offices. The Special Prosecutor had Class A felony charges in 14 percent of its sample indictments compared to five percent for the other offices.

The Special Prosecutor also prosecuted cases involving larger amounts of drugs as shown in Table 8. Cocaine was gathered as evidence in 74 percent of the Special Prosecutor's seizures and 70 percent of the other district attorneys' seizures while the corresponding figures for heroin seizures were 15 percent and 12 percent. Nine percent of the cocaine seizures and four percent of the heroin seizures for the Special Prosecutor's cases involved more than one pound. Above one pound was seized in two percent of the cocaine seizures and none of the heroin seizures in the cases from the other district attorney offices.

Case Complexity

Narcotics cases vary widely in prosecution resources committed to their resolution. To measure this variation, we developed through interviews with the prosecutors and statistical analysis of our two samples a list of factors which resulted in a greater number of court appearances, court motions filed by the defense and prosecution and the total

Table 7

Most Serious Indictment Charge
By Prosecutor

<u>Felony Charge</u>	<u>Special Prosecutor Percent of Cases</u>	<u>Other Offices Percent of Cases</u>
A-I	12.0	3.5
A-II	1.5	1.8
B	79.3	81.8
C	3.0	3.9
D	4.1	8.4
E	--	<u>0.7</u>
Total	99.9	100.1
N=	(266)	(285)

Source: LCER review of two samples of 1986 drug felony indictments from the Office of the Special Narcotics Prosecutor and from the Bronx, Kings and Queens District Attorney offices, April to June 1988.

number of components to those motions. Seven factors generated this additional workload for the prosecutors:

1. The presence of two or more defendants,
2. Class A felony indictment charges,
3. The use of search warrants,
4. The use of informants,
5. Informants testifying in court,
6. The issuance of wiretaps or pen registers, and
7. The involvement of other prosecution agencies.

Each case received one point for the presence of each factor resulting in a scale with values ranging from zero to seven. More complex cases had greater numbers of these factors and consequently consumed more prosecution resources. Appendix A provides further details about scale development.

Table 9 summarizes the complexity of the cases reviewed aggregated into three levels -- low with a scale score of zero or one, medium with a score of two or three, and high with four or more factors present. Eighty-one percent of the Special Prosecutor's cases and 93 percent of the other prosecutors' workload were of low complexity. Five percent of the Special Prosecutor's caseload and less than one percent of the other district attorneys' cases involved cases of high complexity. While this figure may seem to be a relatively low proportion of highly complex cases for the Special Prosecutor, 33 percent of

Table 8

Amount of Drugs Seized
By Prosecutor

<u>Type of Drug</u>	<u>Special Prosecutor Percent</u>	<u>Other Offices Percent</u>
Cocaine		
Under one half ounce	74.1	88.5
Between one half ounce and one pound	17.1	9.4
Over one pound	<u>8.8</u>	<u>2.1</u>
Total	100.0	100.0
N=	(228)	(234)
Heroin		
Under one half ounce	87.2	92.7
Between one half ounce and one pound	8.5	7.3
Over one pound	<u>4.3</u>	<u>--</u>
Total	100.0	100.0
N=	(47)	(41)
Marijuana		
Under one half ounce	78.6	51.2
Between one half ounce and one pound	14.2	17.1
Over one pound	<u>7.1</u>	<u>31.7</u>
Total	99.9	100.0
N=	(14)	(41)
Other Drugs		
Under one half ounce	65.0	90.0
Between one half ounce and one pound	35.0	10.0
Over one pound	<u>--</u>	<u>--</u>
Total	100.0	100.0
N=	(20)	(20)

Source: LCER review of two samples of 1986 drug felony indictments from the Office of the Special Narcotics Prosecutor and from the Bronx, Kings and Queens District Attorney offices, April to June 1988.

Table 9

Complexity of Cases
By Prosecutor

<u>Level of Complexity</u>	<u>Special Prosecutor Percent</u>	<u>Other Offices Percent</u>
Low ^a	81.4	92.6
Medium	14.0	7.0
High	<u>4.5</u>	<u>0.4</u>
Total	99.9	100.0
N=	(264) ^b	(284) ^b

^aScore on the complexity scale from 0 (no factors involved) to 7 (all factors involved); low is defined as 0 and 1; medium 2 and 3 and high 4 to 7.

^bIncludes all cases except those with missing information on one of the seven factors involved in the complexity scale.

Source: LCER review of two samples of 1986 drug felony indictments from the office of the Special Narcotics Prosecutor and from the Bronx, Kings and Queens District Attorney offices, April to June 1988.

the Special Prosecutor's high complexity cases involved wiretaps; 67 percent used search warrants; 92 percent had two or more defendants; and all involved the use of informants and had Class A felony charges. Thus, based upon this measure, the Special Prosecutor has a more complex caseload than the other district attorney offices.

Jurisdiction of the Special Prosecutor's Caseload

The Special Prosecutor has both citywide jurisdiction over felony narcotics cases and responsibility for prosecuting almost all drug felony indictments in New York County. Ninety-two percent of the Special Prosecutor's cases were based solely in New York County (Table 10). We coded the widest geographic area involved in the investigation or prosecution of each case. Of the remaining cases, five percent involved a single county outside New York County while the other three percent had multi-county, other state or outside of the United States connections.

Table 11 differentiates the complexity of the Special Prosecutor's caseload by jurisdiction. Consistent with the Special Prosecutor's responsibility for almost all New York County felony cases, almost all cases of low complexity (99 percent) involved only that county. This largely reflects buy and bust arrests which are the typical cases in the other district attorney offices and are relatively simple cases to prosecute.

Table 10

Special Narcotics Prosecutor
Jurisdiction of Sample Cases

<u>Jurisdiction</u> [*]	<u>Percent</u>
New York	92.1
Bronx	0.7
Kings	1.4
Queens	2.5
Multi-County	1.4
Other States	1.1
Outside United States	<u>0.7</u>
Total	99.9
N=	(280)

* The jurisdiction indicates the widest geographic area involved in the case.

Source: LCER review of a sample of 1986 drug felony indictments for the Office of the Special Narcotics Prosecutor, April to June 1988.

Table 11

Jurisdiction and Complexity
Special Narcotics Prosecutor's Caseload^a

<u>Jurisdiction</u>	<u>Level of Complexity</u> ^b			<u>Total Percent</u>
	<u>Low Percent</u>	<u>Medium Percent</u>	<u>High Percent</u>	
New York County	98.6	70.3	41.7	92.0
Other NYC County	0.9	21.6	25.0	4.9
Multi-NYC County	0.5	5.4	8.3	1.5
Outside New York City or State	<u>--</u>	<u>2.7</u>	<u>25.0</u>	<u>1.5</u>
Total	100.0	100.0	100.0	99.9
N=	(215)	(37)	(12)	(264)

^a Includes all cases except those with missing information on one of the seven factors involved in the complexity scale. The widest jurisdiction involved in the investigation or prosecution of each case was coded.

^b Score on the complexity scale from 0 (no factors involved) to 7 (all factors involved); low is defined as 0 and 1; medium 2 and 3 and high 4 to 7.

Source: LCER review of a sample of 1986 drug felony indictments for the Office of the Special Narcotics Prosecutor, April to June 1988.

However, the Special Prosecutor's cases of medium and high complexity are among the most serious cases and should reflect its citywide role. The jurisdiction of these cases should approximate the citywide distribution of felony drug indictments shown below.

Distribution of New York City Felony Drug Indictments		
	1986	1987
	<u>Percent</u>	<u>Percent</u>
New York County	38	35
Outside New York County	62	65

It does for the most complex cases, but does not for cases of medium complexity. Over 70 percent of medium complexity cases were based in New York County -- significantly higher than the county's 38 percent share of 1986 City drug felony indictments. Forty-two percent of cases of high complexity involved only New York County which is a more even distribution. Overall 63 percent of the Special Prosecutor's medium and high complexity cases were based in New York County.

The finding that the Special Prosecutor's medium complexity cases are disproportionately concentrated in New York County is supported by the Special Prosecutor's distribution of buy money. In 1987, 45 percent of its buy money and 47 percent of its flash money was used by agencies within New York County (Table 12), somewhat higher than the county's 35 percent share of 1987 felony drug indictments.

Table 12

Allocation of Investigative Resources, By County
Special Narcotics Prosecutor
1987

County	Expended Buy Money ^a		Flash Money		Other Resources ^b	
	<u>Amount</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>
New York	\$ 323,175	44.8	\$ 1,434,500	47.4	\$ 445,448	47.5
Kings	156,450	21.7	344,000	11.4	91,647	9.8
Queens	136,500	18.9	1,138,000	37.6	278,505	29.7
Bronx	68,400	9.5	87,000	2.9	121,023	12.9
Richmond	<u>37,200</u>	<u>5.2</u>	<u>26,000</u>	<u>0.9</u>	<u>2,000</u>	<u>0.2</u>
Total	\$ 721,725	100.1	\$ 3,029,500	100.2	\$ 938,623	100.1

^aIncludes buy money from the Special Prosecutor's State, Confidential and federal assets forfeiture accounts.

^bIncludes buy money allocated but not used, recovered buy money and investigative expenditures including informant payments.

Source: LCER data request to the Office of the Special Narcotics Prosecutor, July 1988.

Case Workload Analysis

Many more hours are necessary for prosecutors to develop and prosecute more complex cases than typical buy and bust cases. Prosecutors must establish a basis for issuance of a search warrant; a wiretap requires a long investigation to justify judicial approval and necessitates district attorney monitoring of wiretap results; and cases involving informants may lead to defense motions seeking to identify the informant. Fewer indictments per assistant district attorney thus would be appropriate for more complex cases. The Special Prosecutor's Special Investigations Bureau, for example, which processes the Special Prosecutor's cases of greatest complexity, was referred 347 indictments during 1987 which were handled by 12 assistant district attorneys (ADA) -- a relatively low ratio of 29 cases per ADA.

However, 81 percent of the Special Prosecutor's cases were of low complexity, similar to the vast majority of cases prosecuted in the other district attorney offices. The number of drug felony indictments per ADA for these cases should be similar for the Special Prosecutor and for the other offices. To test this contention, we collected information on the number of 1987 felony drug indictments and ADAs excluding supervisors for the Special Prosecutor and for the Kings and the Bronx District Attorney offices. Queens was excluded since it does not have a separate narcotics bureau.

Table 13 presents the number of felony drug indictments per ADA for the three prosecutors' offices after separating out the Special Prosecutor's legal staff which were responsible for the more complex cases. ADAs for the Special Prosecutor handled an average of 124 cases in 1987, a slightly lower ratio than Kings (136 cases per ADA), but 57 fewer cases per ADA than Bronx. The Bronx average case ratio is high; however the narcotics division staff grew from 17 to 32 during that year. Using the end of the year staffing figure, Bronx's ratio drops to 138 cases per ADA, a similar workload to Kings narcotics ADAs and slightly higher than Special Prosecutor ADAs.

Table 13

Felony Drug Indictment Workload
Selected New York City Prosecutors, 1987

<u>Workload Information</u>	<u>Special Prosecutor</u>	<u>Bronx</u>	<u>Kings</u>
1987 Felony Drug Indictments*	6,048	4,426	4,203
Average Number of ADAs to Prosecute*	48.6	24.5	31
Cases Per ADA	124.4	180.7	135.6

*The staff and the cases assigned to those staffs in the Special Prosecutor's Special Investigations Bureau and the Senior Trial Counsel in the Trial Bureaus are not included in these figures since these largely represent more complex narcotics cases requiring greater staff resources to prosecute. Supervisory staff are not included for all of the prosecutor offices.

Source: Office of the Special Narcotics Prosecutor and the Bronx and Kings District Attorney offices, July 1988.

Since Kings, and to a lesser extent Bronx, only have comparable resources to the Special Prosecutor for handling cases of low complexity, this limits the number of more complex investigations that these prosecutors can pursue. While the Special Prosecutor's resources for more complex cases were disproportionately concentrated in New York County, the Bronx and Kings District Attorney offices had fewer resources to pursue more serious and complex cases to fill that void.

Chapter Summary

● The Special Prosecutor's caseload involved a greater proportion of Class A felony indictments (14 percent) -- the most serious category in the Penal Law -- than the other prosecutors' caseload (five percent) and included larger amounts of cocaine and heroin seized.

● The Special Prosecutor had a more complex caseload than the other offices; 19 percent of the Special Prosecutor's cases were of high or medium complexity compared to seven percent for the other prosecutors.

● Ninety-two percent of the Special Prosecutor's cases were based solely in New York County. That concentration largely reflects the Special Prosecutor's responsibility for prosecuting almost all New York County felony drug indictments. Almost all of the Special Prosecutor's cases of low complexity were based solely in New York County.

● While the jurisdiction of the Special Prosecutor's cases of high complexity reflected its citywide role, 70 percent of its cases of medium complexity were based in New York County. That distribution is much higher than the 38 percent of 1986 City drug felony indictments filed in New York County.

● For cases of low complexity, the Special Prosecutor averaged 124 cases per ADA in 1987, a slightly lower ratio than Kings (136 cases per ADA). Bronx had a higher ratio of 181 cases per ADA because major narcotics division staffing increases were not fully completed until the end of 1987. Since Kings and, to a lesser extent, Bronx have only comparable resources to the Special Prosecutor to prosecute cases of low complexity, this limits the number of more complex investigations that can be carried out by those prosecutors.

IV CASE OUTCOMES

State support for the Special Narcotics Prosecutor was expected to expedite the processing of felony narcotics cases resulting in effective prosecutions of narcotics violators. This chapter compares the outcomes of felony narcotics cases prosecuted by the Special Prosecutor to those handled by the Bronx, Kings and Queens District Attorney offices in the following areas:

- Case length,
- Conviction rates, and
- Plea bargaining and sentencing practices.

Case Length

Excluding significant time periods when the court was seeking a defendant's return, the Special Prosecutor's sample cases had an average disposition time of about five months and one week (158 days) compared to slightly over six months (186 days) for the other offices. This includes only cases where action had been completed for all defendants in a case as of June 1988.

The standard of the Chief Administrator of the Courts is that felony cases be disposed within six months of indictment, excluding periods when a case is not under the court's active control. The Special Prosecutor completed 69 percent of its closed sample cases within six months compared to 57 percent for the other offices.

To expedite case processing, a prosecutor may file a superior court information against a defendant. Under an information, the defendant is charged with a felony and waives the right to be indicted by a grand jury. Although superior court informations have the same force and effect as indictments, they can be processed much more quickly. State Office of Court Administration data show that the average case length for narcotics informations disposed in 1986 in New York City was 54 days compared to 202 days for narcotics indictments completed that year.

A specialized court part, known as Part N, was established in New York County in April 1987 to process superior court informations involving felony narcotics charges. By the end of March 1988, Bronx, Kings and Queens counties had also established such parts. Consequently, superior court informations as a percentage of all felony narcotics dispositions citywide rose from eight percent in 1986 to 17 percent in 1987.

Conviction Rates

All of the prosecutors obtained conviction rates during 1986 of over 90 percent for defendants indicted on drug felonies. We developed conviction rates from all 1986 drug felony indictments disposed as of April 1988. Indictments disposed by the death of the

defendant, and those covered or superseded by another indictment were excluded. The conviction rates were as follows:

1986 Conviction Rates -- Drug Felony Indictments

<u>Office</u>	<u>Percent Convicted</u>
Special Narcotics Prosecutor	91.7
Other District Attorney offices	93.4
Bronx	94.9
Kings	92.8
Queens	92.5

Few of these convictions resulted from trial verdicts. Ninety-six percent of the convicted defendants pled guilty. Such pleas are products of the plea bargaining process.

Plea Bargaining and Sentencing

Statutory Restrictions

State statutes define how felony indictments may be disposed of through plea bargaining. Unless the defendant pleads guilty to all of the charges or counts in an indictment, the court and the prosecutor must agree to the terms and conditions for any defendant's guilty plea including the charge of conviction and the sentence. Since the prosecutor's consent is required, the prosecutor can be held accountable for any reduction in charges and the sentence handed down to the defendant in the plea bargain.

Statutes restrict the extent to which pleas may be taken to reduced felony charges and the subsequent sentences that can be given to convicted defendants. Felony defendants with prior felony convictions in the past ten years must plead to felony charges and be sentenced as second felony offenders. All second felony offenders and first felony narcotic offenders convicted of Class A or B felony charges, with one exception, must be sentenced to State prison. Except for some Class C narcotics convictions, there are no requirements that other first felony offenders receive jail or State prison sentences. State prison sentences are for a minimum of one year; incarceration for a fixed period of up to one year is spent at a county or city jail. Appendix B summarizes statutes covering plea bargaining and sentencing for drug offenses.

Prosecutors' Records

Of the sample cases reviewed, 212 of the Special Prosecutor's 281 cases and 241 of the other offices' 287 cases were convicted by plea, completed through sentencing and contained all pertinent information: prior record, charge of indictment, charge of conviction, and sentencing information. Analyses of sample cases are based upon these 453 plea bargains.

For both sets of prosecutors, approximately one quarter of these defendants were second felony offenders. About one quarter of the defendants had some criminal record, either one or more felony convictions over ten years old or prior misdemeanor convictions. The remaining defendants had no prior misdemeanor or felony convictions.

Adherence to Statutes. The prosecutors adhered closely to statutory restrictions on pleas to less serious conviction charges. In several cases, dismissal of the most serious indictment charges permitted pleas that otherwise would have been illegal. For example, the Class A charge was dismissed in 24 percent of the Special Prosecutor's Class A indictments and ten percent of the other offices' Class A indictments. Only one of the 453 guilty pleas was to a lesser charge than required by statute.

Several sentences did not meet legal restrictions. In two of the Special Prosecutor's cases and three cases in the other offices, second felony offenders received prison sentences shorter than mandated by statute. In addition, some first felony offenders pleading to Class C felonies were sentenced to probation. According to the Counsel for the State Division of Criminal Justice Services, a probation sentence alone does not satisfy statutory requirements (Exhibit B-3). Thirty-one percent of the Special Prosecutor's first felony offenders convicted of Class C felonies and seven percent of the other offices' first felony Class C convictions received a technically illegal probation sentence. However, it should be noted that a jail and probation sentence where the jail term was one day or time served would have made these sentences legal.

Outcomes for All Indictments. Table 14 shows that defendants pled to the most serious indictment charge in eight percent of the Special Prosecutor's cases and 29 percent of the other offices' cases. Within each office, the percentage was lowest for second felony offenders, possibly because they must be sentenced to a prison term, even for a Class E felony plea.

Thirty-eight percent of the Special Prosecutor's defendants and 46 percent of other offices' narcotics felons were sentenced to State prison. In accordance with statute, all second felony offenders were sentenced to prison. Second felony offenders accounted for approximately two thirds of the Special Prosecutor's prison sentences and almost one half of the other offices' prison sentences.

Table 14

Pleas to Top Charge of Indictment
by Prosecutor

<u>Criminal History</u>	<u>Special Prosecutor Percent of Cases</u>	<u>Other Offices Percent of Cases</u>
Second Felony	3.6 (55)	20.0 (55)
Some Prior Record	12.3 (57)	32.8 (58)
No Prior Record	8.0 (100)	30.5 (128)
Total	8.0 (212)	28.6 (241)

Note: Number in parentheses is the number upon which
the percentages are based.

*Source: LCER review of two samples of 1986 drug felony
indictments from the Office of the Special Narcotics
Prosecutor and from the Bronx, Kings and Queens District
Attorney offices, April to June 1988.*

A Felony Indictments. The number of Class A indictment pleas completed through sentencing was small -- 21 for the Special Prosecutor and ten for the other offices. Of the Class A-I indictments, only one (from the other offices) was convicted by a plea to a Class A-I felony. The A-I indictment charge was dismissed in 17 percent of the Special Prosecutor's A-I indictments and 13 percent of the other offices' A-I indictments. All remaining Class A-I defendants pled to Class A-II felonies and were sentenced to State prison. The average minimum sentence imposed for those A-II pleas was 56 months for the Special Prosecutor and 66 months for the other offices.

There were only five completed cases with Class A-II indictments, three from the Special Prosecutor and two from the other offices. One defendant from the other offices pled to an A-II charge. The A-II charge was dismissed for two of the Special Prosecutor's three cases resulting in pleas to lower than B felonies. Defendants pled to B felonies in the other two completed A-II felony indictment cases.

B Felony Indictments. Class B felony indictments constitute a large majority of prosecutors' narcotics felony workloads. In 1986, B felony indictments accounted for 75 percent of New York City prosecutors' drug felony indictments. Approximately four fifths of the defendants from both samples who pled guilty had a Class B felony as the most serious indictment charge.

The Special Prosecutor accepted pleas to less serious charges more frequently than did the other offices as illustrated by Table 15. Eight percent of the Special Prosecutor's defendants with some prior record pled to Class B felonies, compared to 32 percent of the other offices' defendants. The Special Prosecutor accepted Class D felony or lower pleas for 89 percent of second felony offenders; the other offices accepted such pleas in 62 percent of these cases. The greater complexity of the Special Prosecutor's workload had no relationship with the types of pleas negotiated.

Partly as a result of accepting pleas to less serious charges than the other offices, the sentences for the Special Prosecutor's B felony indictments differed from those for the other offices as indicated in Table 16. Five percent of the Special Prosecutor's defendants with some or no prior record received a State prison sentence compared to 32 percent for the other district attorney offices. The Special Prosecutor's defendants with some or no prior record frequently were not incarcerated at all. Thirty-eight percent were given probation only compared to 13 percent of the other offices' defendants.

All second felony offenders were sentenced to State prison. The Special Prosecutor's average minimum sentence for these defendants was six months shorter than the average minimum sentence given defendants from the other offices (Table 17).

Over half of the first felony offender defendants in both samples received jail or jail and probation sentences. Jail only sentences from the other offices were slightly longer than those from the Special Prosecutor.

Other Indictments. Fifty-one Class C, D or E indictments -- 16 for the Special Prosecutor and 35 for the other offices -- were completed through sentencing. The Special Prosecutor held 44 percent of these cases to the top indictment charge compared to 66 percent in the other offices. All second felony offenders were sentenced to State prison. The average minimum sentence for second felony offenders in the other offices was about two and a half months longer than in the Special Prosecutor's cases.

Table 15**B Felony Indictment Pleas
by Prosecutor**

<u>Criminal History</u>	<u>Special Prosecutor Percent</u>	<u>Other Offices Percent</u>
-------------------------	---	--------------------------------------

Second Felony Offender

Pled to:

Class B Felony	2.1	16.0
Class C Felony	8.5	22.0
Class D Felony	89.4	58.0
Class E Felony	<u>--</u>	<u>4.0</u>

Total	100.0	100.0
-------	-------	-------

N=	(47)	(50)
----	------	------

Some Prior Record

Pled to:

Class B Felony	8.3	31.9
Class C Felony	58.3	36.2
Class D Felony	<u>33.3</u>	<u>31.9</u>

Total	99.9	100.0
-------	------	-------

N=	(48)	(47)
----	------	------

No Prior Record

Pled to:

Class B Felony	6.3	21.2
Class C Felony	51.3	46.5
Class D Felony	42.5	30.3
Class A Misdemeanor	<u>--</u>	<u>2.0</u>

Total	100.1	100.0
-------	-------	-------

N=	(80)	(99)
----	------	------

Source: LCER review of two samples of 1986 drug felony indictments from the Office of the Special Narcotics Prosecutor and from the Bronx, Kings and Queens District Attorney offices, April to June, 1988.

Table 16

Plea Bargained Sentences
for B Felony Indictments
by Prosecutor

<u>Criminal History</u>	<u>Special Prosecutor Percent</u>	<u>Other Offices Percent</u>
Second Felony Offender		
Prison	100.0	100.0
Jail	--	--
Jail and Probation	--	--
Probation	<u>--</u>	<u>--</u>
Total	100.0	100.0
N=	(47)	(50)
Some Prior Record		
Prison	6.3	42.6
Jail	43.8	14.9
Jail and Probation	18.8	34.0
Probation	<u>31.3</u>	<u>8.5</u>
Total	100.2	100.0
N=	(48)	(47)
No Prior Record		
Prison	5.0	27.3
Jail	32.5	5.1
Jail and Probation	21.3	51.5
Probation	41.3	15.2
Other*	<u>--</u>	<u>1.0</u>
Total	100.1	100.1
N=	(80)	(99)

*Other sentences include conditional discharge, unconditional discharge, and fines.

Source: LCER review of two samples of 1986 drug felony indictments from the Office of the Special Narcotics Prosecutor and from the Bronx, Kings and Queens District Attorney offices, April to June 1988.

Table 17

Length of Plea Bargained Prison Sentences
for B Felony Indictments
by Prosecutor

<u>Criminal History</u>	<u>Special Prosecutor</u>		<u>Other Offices</u>	
	<u>Number Prison Sentences</u>	<u>Mean Minimum in Months</u>	<u>Number Prison Sentences</u>	<u>Mean Minimum in Months</u>
Second Felony Offender	47	26.0	50	32.5
Some Prior Record	3	14.0	20	16.1
No Prior Record	<u>4</u>	<u>12.0</u>	<u>27</u>	<u>15.3</u>
Total	54	24.3	97	24.3

Source: LCER review of two samples of 1986 drug felony indictments from the Office of the Special Narcotics Prosecutor and from the Bronx, Kings and Queens District Attorney offices, April to June 1988.

The Special Prosecutor's first felony offenders indicted on these lesser felonies, however, were more likely to be sentenced to State prison than those from the other offices -- 18 percent compared to six percent. They were also less likely to receive a sentence involving no incarceration at all. Thirty-six percent of the Special Prosecutor's defendants received a probation sentence, conditional or unconditional discharge, or a fine, compared to 48 percent in the other offices. Combined jail and jail and probation rates were similar between offices.

1987 Indictments. To assess whether the above differences in plea bargaining practices have continued, we reviewed DCJS aggregate data on 1987 drug felony indictments disposed as of April 1988. Unlike the two 1986 samples, the Special Prosecutor (46 percent) and the other offices (48 percent) had similar proportions of pleas to the top indictment count. However, for Class B indictments, over three fifths of the completed plea bargains for the prosecutors, the Special Prosecutor held five percent to the top count compared to 32 percent for the other offices. This difference is significant since, with one exception, first felony offenders pleading to a Class B charge of conviction must be sentenced to State prison while a State prison sentence for those pleading to lesser felony charges is permitted but not mandated.

Partly because of the above pattern of top charge pleas, the Special Prosecutor's plea bargains with first felony offenders did not decrease the differences among prosecutors in the proportions of State prison sentences imposed on those defendants. Eight percent of these Special Prosecutor defendants pleading to Class B or lower felonies were sentenced to State prison compared to 25 percent for the other district attorney offices.

Prosecutors' Differences

We discussed the above differences in plea bargaining practices with the staff of the Special Narcotics Prosecutor and the New York City administrative judges. The Special Prosecutor's staff indicated that the plea bargaining policies in the other district attorney

offices had resulted in an excessive backlog of pending cases. Statistics support this concern. As of December 1986, Bronx, Kings and Queens counties had 41 percent of felony cases pending over six months compared to 27 percent for New York County. They also stated that their plea bargaining policies are used to cultivate confidential informants.

The Chief Administrative Judge indicated that individual district attorney plea bargaining policies had a significant impact on variation in case outcomes among the prosecutors. The administrative judges also indicated that many factors affected the nature of plea bargains including community concerns and the circumstances surrounding the individual cases.

Chapter Summary

- The Special Prosecutor processed its cases through sentencing in slightly over five months, almost one month faster than the other district attorney offices.

- Conviction rates for 1986 were over 90 percent for the Special Prosecutor and for the other district attorney offices.

- First felony defendants pleading to certain Class C narcotics felony charges were sentenced inappropriately in 31 percent of the Special Prosecutor's first offender Class C pleas and seven percent of those pleas from the other offices.

- For B felony indictments -- approximately four fifths of the cases from both samples -- the Special Prosecutor's plea bargaining practices resulted in lower proportions of State prison sentences, shorter State prison terms and higher rates of defendants receiving no incarceration than for the other district attorney offices.

- The Special Prosecutor's first felony offenders under Class C, D or E indictments were more likely to go to State prison, and less likely to receive sentences with no incarceration than those from the other offices.

- The Special Prosecutor's staff indicated that the plea bargaining policies in the other offices had resulted in an excessive backlog of pending cases. Statistics show a greater backlog in the other offices as of December 1986. They also stated that their plea policies are used to cultivate informants.

FOOTNOTES

I Program Background and Legislative Intent

1. National Narcotics Intelligence Consumers Committee (NNICC), The NNICC Report: 1985-86 (June 1987), p. 26.
2. Ibid., pp. 29-30.
3. Ibid., p. 31.
4. Chapter 462, Laws of 1971, Section 1.
5. Governor's Memorandum, Chapter 462, Laws of 1971.
6. New York State Division of Criminal Justice Services, Fiscal Audit Report of the New York City Office of the Special Narcotics Prosecutor (December 1987), p. 23.

APPENDIX A

Audit Scope and Methodology

Sample Selection

To compare the prosecution of narcotics cases by the Special Prosecutor and by the Bronx, Kings and Queens District Attorney offices which receive Special Narcotics Program funds, we drew two samples of 1986 drug felony indictments -- one for the Special Prosecutor and the other for the three other district attorney offices. That year was selected since State Division of Criminal Justice Services (DCJS) statistics indicate that 81 percent of 1986 drug felony indictments had been disposed of by a dismissal, an acquittal or a conviction as of March 1988.

The samples excluded cases which led to dismissals, acquittals or youthful offender findings. Table A-1 delineates the number of remaining 1986 drug felony indictments for each of the four prosecutors' offices and the number sampled from each office. Since the Bronx, Kings and Queens District Attorney offices constituted one sample, the number sampled for those offices was determined by their respective shares of 1986 drug felony indictments.

Table A-1

1986 New York City Drug Felony Indictments
LCER Samples

<u>Sample</u>	<u>Total Excluding Selected Cases*</u>	<u>Percent of Sample Universe</u>	<u>Sample Size</u>
Office of the Special Narcotics Prosecutor	4,270	100.0	281
Other District Attorney Offices	6,896	100.1	287
Bronx	2,232	32.4	92
Kings	2,562	37.2	107
Queens	2,102	30.5	88

*Total excludes cases which were dismissed, acquitted or which resulted in a youthful offender finding.

*Source: LCER analysis of State Division of Criminal Justice
Services printout, March 9, 1988.*

Cases were chosen randomly from a DCJS listing. For the Special Prosecutor, 281 cases were chosen while 287 cases were reviewed for the other three offices. Results are statistically significant at a 90 percent confidence level with a plus or minus five percent error.

The offices varied in their ability to produce the cases selected for review. While only three percent of Kings' cases and six percent of the Special Prosecutor's cases could not be produced, the proportions of missing cases for Bronx (29 percent), and Queens (20 percent) were substantially higher. We randomly chose additional cases to substitute for those missing cases.

Complexity Scale

To compare the types of cases prosecuted by the Special Prosecutor and the other district attorneys, we identified, through interviews with prosecution staffs, six factors which they perceived to be somewhat or highly important in adding to the complexity of the prosecution of a case. These elements were:

1. The use of wiretaps,
2. The presence of two or more defendants,
3. The involvement of other prosecution agencies,
4. The use of search warrants,
5. The use of informants, and
6. Having informants testify.

The prosecutors felt that these factors raised complications that would increase the legal resources required to prosecute a case.

We also assessed the relationship between the most serious indictment charge in each case and the resources used to prosecute a case, and established Class A felony charges as a seventh factor in the complexity scale.

Verification of Complexity Scale. To verify that these seven factors contributed to case complexity, correlations were done between those factors and three measures of the prosecutor's workload -- the number of court appearances, the number of defense and prosecution court motions and the total number of components to those motions. If a factor increased a case's complexity, its presence should result in a larger number of court appearances and a greater number of court motions and components of motions.

Each outcome or dependent measure (appearances and motions) was broken down by each of the seven input factors. For the two informant, the wiretap or pen register and the involvement of other prosecution agencies measures, the presence or absence of that factor was analyzed. The actual number of codefendants was analyzed as coded. For the most serious indictment charge of the case, Class A-I and A-II felonies were consolidated while Class B, C, D, and E felonies were considered separately. For presentation purposes, Table A-2 presents two categories for the codefendant and indictment charge factors -- Class A felonies and all other cases, and the presence of one or more than one defendant.

Except for the relationship between wiretaps and pen registers and motion components, each of the seven input factors and the three output factors had statistically significant correlations. Wiretaps and pen registers, however, had statistically significant relationships with court appearances and the average number of motions. Based upon these statistical relationships and the interviews with the prosecutors, the use of wiretaps and pen registers was retained in the complexity scale.

Table A-2

Complexity of Cases
Selected Factors^a

Factor	Average Number of		
	Court Appearances	Motions	Motion Components
Search Warrant			
Yes	14.2 (40) ^b	1.9 (40) ^b	7.0 (40) ^b
No	8.8 (414)	0.6 (415)	2.7 (415)
Wiretap or Pen Register			
Yes	21.5 (2) ^b	5.0 (3) ^b	6.7 (3)
No	9.3 (452)	0.7 (452)	3.0 (452)
Informant Used			
Yes	16.3 (20) ^b	2.6 (21) ^b	7.2 (21) ^b
No	9.0 (434)	0.7 (434)	2.9 (434)
Informant Testified			
Yes	19.0 (2) ^b	3.0 (2) ^b	14.0 (2) ^b
No	9.3 (452)	0.7 (453)	3.0 (453)
Other Prosecution Agency Involved			
Yes	16.6 (6) ^b	3.2 (5) ^b	9.8 (6) ^b
No	9.2 (448)	0.7 (448)	3.0 (448)
Number of Defendants			
Two or more	12.1 (167) ^b	1.2 (167) ^b	4.9 (167) ^b
One	7.7 (288)	0.5 (288)	2.0 (288)
Most Serious Indictment Charge			
A Felony	15.1 (30) ^b	2.2 (31) ^b	6.3 (31) ^b
Lower than A Felony	8.9 (414)	0.7 (413)	2.8 (413)

^aIncludes only those cases where there is a final disposition for all defendants. Number of cases upon which averages are based are in parentheses.

^bRelationships which are statistically significant using a F test with a 95 percent confidence level.

Source: LCER review of two samples of 1986 drug felony indictments from the Office of the Special Narcotics Prosecutor and the Bronx, Kings and Queens District Attorney offices, April to June 1988.

APPENDIX B

Plea Bargaining and Sentencing Statutes

Section 220.10 of the Criminal Procedure Law specifies which pleas may be entered to an indictment. A defendant is entitled to plead guilty or not guilty to the entire indictment, which may consist of several counts or separate charges. With the approval of the court and the prosecutor, however, the defendant may plead guilty to part of the indictment, to a lesser included offense or to any combination of indictment counts and lesser included offenses. Agreement among all three parties achieved through these negotiations is known as plea bargaining. The entry and acceptance of a negotiated plea disposes of the entire indictment.

The requirement for the prosecutor's consent gives the prosecutor broad authority to affect the terms and conditions of the guilty plea. Without the prosecutor's consent, the court cannot accept a guilty plea unless it is to the entire indictment. Thus when a defendant is convicted by plea, the prosecutor can be held accountable for the extent to which charges are reduced between indictment and conviction.

The role of the prosecutor in the sentencing process is not as explicitly defined in the law. The prosecutor, however, also exercises control over sentencing. As part of the authority to dictate the terms and conditions of a guilty plea, the prosecutor is empowered to specify a sentence agreed upon by the prosecutor and defendant as a precondition to a guilty plea. If such sentence is unacceptable to the court, the guilty plea may be withdrawn. Thus the prosecutor as well as the court has responsibility for the sentences imposed upon defendants convicted by plea.

The extent to which a defendant may plead to a lesser charge is limited by statute (Exhibit B-1). For example, a defendant indicted on a Class B narcotics felony must plead to at least a Class D felony. A felony defendant who has been convicted of a felony within the past ten years must plead to a felony and be subsequently sentenced as a second felony offender.

Exhibit B-1

Statutory Plea Restrictions Penal Law Article 220 and 221 Felony Indictments*

<u>Most Serious Indictment or Information Charge</u>	<u>Guilty Plea at least to</u>
A-I or A-I attempt	A-II; except Class B felony if defendant is eligible for youthful offender treatment
A-II or A-II attempt	B felony
B	D felony
C, D or E	An offense; except Class E felony for second felony offenders

*Article 221 of the Penal Law covers marijuana offenses and does not include Class A or Class B felony charges. Article 220 covers other drug and narcotics offenses.

Source: Section 220.10 of the Criminal Procedure Law.

For sentencing purposes, narcotics felons are categorized as first felony offenders, second felony offenders or persistent felony offenders. The last is a discretionary classification for persons with two or more prior felony convictions. A defendant with a single felony conviction over ten years old or with no prior felony convictions is treated as a first felony offender. With one exception, second felony offenders and first felony offenders pleading to Class A or B felony charges must receive State prison sentences (Exhibits B-2 and B-3). First and second felony offenders pleading to Class A-II or B felonies may be sentenced to lifetime probation with the court and prosecutor's consent if they cooperate with the district attorney. Except for certain Class C narcotics convictions, first felony offenders pleading to less than a B felony do not have to be sentenced to jail or prison.

Exhibit B-2

Sentences for First Felony Offenders
Penal Law Article 220 and 221 Felonies^a

<u>Most Serious Class of Conviction</u>	<u>Mandated Sentence</u>
A-I	State prison; minimum, 15 to 25 years; maximum, life.
A-II ^b	State prison; minimum, 3 to 8 1/3 years; maximum, life.
B ^b	State prison; minimum, 1 year to 1/3 maximum; maximum, 3 to 25 years.
C--All but selected controlled substances	Incarceration is mandated. Options include State prison (minimum, 1 year to 1/3 maximum; maximum, 3 to 15 years), up to one year in jail, and up to six months in jail plus probation or conditional discharge.
C--Concentrated cannabis, phencyclidine, methadone or marijuana	No single mandated sentence. Large range of options, from prison to unconditional discharge.
D and E	No single mandated sentence. Large range of options, from prison to unconditional discharge.

^aArticle 221 of the Penal Law covers marijuana offenses and does not include Class A or Class B felony charges. Article 220 covers other drug and narcotics offenses.

^bLifetime probation may be ordered for a defendant who cooperates with the prosecution, if the court and prosecutor consent.

Source: Sections 60.01, 60.05, 65.00 and 70.00 of the Penal Law.

Except for Class A-I felony convictions, second felony offenders must receive longer minimum prison sentences than do first offenders. For example, a first felony offender convicted of a Class A-II felony must receive a minimum prison sentence of at least three years compared to a six year minimum for a second felony offender. Persistent felony offenders, regardless of the class of felony conviction, must receive the mandatory sentence for an A-I felony conviction -- 15 to 25 years to life.

State prison sentence terms are given as ranges between minimum and maximum sentences, with minimums of at least one year. Any incarceration of a fixed period of one year or less would be served in a county or city jail.

Exhibit B-3

Sentences for Second Felony Offenders
Penal Law Article 220 and 221 Felonies^a

Most Serious Class of Conviction	Mandated Prison Sentence	
	<u>Minimum</u>	<u>Maximum</u>
A-I	15 to 25 years	Life
A-II ^b	6 to 12 1/2 years	Life
B ^b	1/2 maximum	9 to 25 years
C	1/2 maximum	6 to 15 years
D	1/2 maximum	4 to 7 years
E	1/2 maximum	3 to 4 years

^aArticle 221 of the Penal Law covers marijuana offenses and does not include Class A or Class B felony charges. Article 220 covers other drug and narcotics offenses.

^bLifetime probation may be ordered for a defendant who cooperates with the prosecution, if the court and prosecutor consent.

Source: Section 70.06 of the Penal Law.

APPENDIX C
AGENCY RESPONSES AND LCER REBUTTAL

NYS Division of Criminal Justice Services
District Attorney of Kings County
Office of Prosecution Special Narcotics Courts
LCER Rebuttal

*Asterisks indicate where revisions
have been made in the audit as
the result of these responses.*



STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES
EXECUTIVE PARK TOWER
STUYVESANT PLAZA
ALBANY, NEW YORK 12203

JOHN J. POKLEMBA
DIRECTOR OF CRIMINAL JUSTICE
AND
COMMISSIONER

AREA CODE 518
TEL. 457-1260

January 3, 1989

Mr. James J. Haag
Acting Director
New York State Legislative
Commission on Expenditure Review
111 Washington Avenue
Albany, New York 12210-2277

Dear Mr. Haag:

Thank you for the opportunity to review the draft report prepared by the Legislative Commission on Expenditure Review (LCER) concerning the Office of the Special Narcotics Prosecutor (SNP) for the City of New York. The alarming increase in drug trafficking and abuse requires that we maximize the effectiveness of all drug enforcement programs. The Commission's in-depth analysis of the SNP, comparison of office caseloads and review of case processing, plea bargaining and sentencing practices provides important insights into the prosecution of drug offenses in New York City.

As acknowledged in your Report, during 1987 the Division of Criminal Justice Services (DCJS) conducted an audit of the SNP's fiscal practices and operations. The findings of DCJS's audit were similar in many respects to the findings of the LCER report. The results of these audits will enable DCJS to better administer the Special Narcotics Court Parts Program.

The Special Prosecutor's Office was established in 1971 in response to a crisis caused by a rapid increase in the number of drug cases, which threatened to backlog prosecution offices and overwhelm court calendars. The enabling program legislation called for centralized direction and coordination of drug prosecution efforts citywide. In view of the complexity and magnitude of the problem and the need for extensive interagency cooperation, the legislation required the five District Attorneys of New York City to formulate an operational plan to implement the SNP. The plan was to provide for the appointment of an

Assistant District Attorney to the staff of one of the District Attorneys (now known as the Special Narcotics Prosecutor) and the establishment of standards, administrative policies and procedures to govern the performance of drug related prosecutorial functions.

The SNP has grown steadily since its inception. It appears, however, that in the passage of time and succession of staff the original intent and structure of the SNP has become obscured.

In accordance with the DCJS mandate to administer the program, an agency audit team studied the operation of the SNP in 1987. The DCJS audit found that the five New York City District Attorneys had not updated the original implementation plan, directed the growth of the SNP or attempted to coordinate the prosecution of drug cases citywide. DCJS further found that uniform operational policies and standards had not been adopted and that a centralized direction for the citywide prosecution of narcotics offenses had not been established. The audit also noted that the allocation of program resources did not reflect the workload of the central and decentral components and that the SNP was unable to readily identify and segregate its complex cases that have citywide significance from lower level cases originating in New York County.

Although the DCJS audit found a number of program irregularities, it also identified several important strengths that justified the retention of the SNP. These include the citywide jurisdiction of the office, its experienced investigative staff and the close, cooperative working relationship that the SNP has developed with citywide drug enforcement task forces.

In response to the audit team's observations, DCJS recommended that the five New York City District Attorneys, in conjunction with the Special Prosecutor and other City law enforcement officials, revise and update the operational plan. DCJS further recommended that the SNP should concentrate on the investigation and prosecution of complex cases having citywide impact; serve as a clearinghouse and resource/technical assistance center to facilitate the coordination of drug prosecution efforts citywide; and abandon the decentral program component and reallocate program resources among the five District Attorneys.

The findings of the LCER audit staff closely reflect the report by DCJS. They also lend credence to the recommendations posed by DCJS to revitalize and restructure the SNP.

As recognized by the Legislature in 1971, the coordination of narcotics prosecution efforts and the establishment of uniform standards, administrative policies and procedures requires the

input and cooperation of the five New York City District Attorneys. In urging that the District Attorneys and the Special Prosecutor update the initial plan, the LCER and DCJS reports reflect the original intent of the enabling legislation.

The updated plan devised by the District Attorneys should include a resource allocation model, specific case intake criteria to facilitate the targeting of SNP resources, the establishment of procedures regarding interoffice coordination, and uniform operational standards and policies. Requiring the involvement of the District Attorneys in the development of the plan is essential to the successful restructuring of the program.

Concentration of Resources in New York County

The LCER audit team's observation concerning the concentration of SNP resources on New York County cases supports the DCJS recommendations, which called for the analysis of the SNP caseload, the concentration of SNP resources on the prosecution of complex, citywide cases and the reallocation of program funds.

Targeting SNP resources on the investigation and prosecution of complex, citywide cases will enable the Special Prosecutor to expand and enhance the services provided by his office in the outer boroughs. Narrowing the scope of cases prosecuted by the SNP to those with citywide significance should also result in additional program resources being available for distribution to the five District Attorneys to enhance the case processing capabilities of their offices.

This reorientation and restructuring maximizes the application of existing SNP strengths. Implementation, however, will require the full cooperation of the District Attorneys and the Special Prosecutor, as well as the law enforcement officials who are responsible for the development of these cases.

The LCER report recommended that DCJS develop goals and reporting mechanisms to ensure that the SNP broadens its jurisdiction. We believe that this can be accomplished only in conjunction with the adoption of an updated program plan by the five District Attorneys; without an updated plan being agreed upon by the District Attorneys, DCJS would be ill-equipped to act on this recommendation.

Reallocation of Resources

The LCER report's recommendation that DCJS reallocate State funds to assure the equitable distribution of resources is closely related to the recommendation to redefine the SNP's role. This recommendation can be implemented in conjunction with the updating of the program plan and the refocusing of the Special

Prosecutor's office. The reallocation will require the redeployment of staff, the reallocation of local matching funds, the reassignment of cases, and the realignment of interagency working relationships. The substantial and far reaching impacts of this reallocation will affect all facets of the prosecution function in each of the boroughs.

DCJS would assume responsibility for preparing a plan to reallocate State funds, provided that the plan be based upon the revised role and resource needs of the SNP as defined in the updated program implementation plan prepared by the five District Attorneys.

Confidential Funds

The LCER report is critical of the use of the SNP's confidential fund. The report argues that this money may be used only for the purchase of controlled substance and not for payments to informants or operational expenses associated with the purchase of controlled substances.

The interpretation of the budget bill language that governs the use of confidential funds is subject to differing interpretations, however. The language, which stipulates that the funds "shall be available for the purchase of controlled substances by the Office of the Special Narcotics Prosecutor," does not specifically preclude the use of buy money to finance other phases of the drug purchase transaction. Drug buys frequently involve the payment of informants and the purchase of services to establish the identity of the undercover officer. These necessary and related expenses are uniformly recognized by many law enforcement agencies as an integral part of any "drug buy" and are included in the Confidential Funds guidelines promulgated by the Drug Enforcement Administration and U.S. Department of Justice, Bureau of Justice Assistance.

Although the DCJS fiscal team reported that the "management of confidential funds was, on the whole, very good" they also noted several irregularities and posed a series of recommendations designed to enhance the administration of these funds. These recommendations focused on strengthening internal controls to ensure the integrity of the accounting process and the preparation of expenditure reports required by the Legislature.

As previously stated, the LCER findings closely reflect the earlier observations and recommendations suggested by DCJS. We

stand ready to work with the Legislature, the Special Prosecutor, the five New York City District Attorneys and other concerned officials to enhance the effectiveness of the program.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John J. Poklemba", written in a cursive style.

John J. Poklemba
Commissioner

DISTRICT ATTORNEY OF KINGS COUNTY
MUNICIPAL BUILDING
BROOKLYN, N.Y. 11201
(718) 802-2000



ELIZABETH HOLTZMAN
DISTRICT ATTORNEY

December 22, 1988

Mr. James J. Haag
Acting Director
State of New York
Legislative Commission on
Expenditure Review
111 Washington Avenue
Albany, New York 12210-2277

Dear Mr. Haag:

District Attorney Holtzman asked me to respond to the preliminary draft which you sent her of the program audit, "Office of the Special Narcotics Prosecutor." Ms. Holtzman very much appreciates the opportunity to respond and commends your office for the thorough and professional work that went into the preparation of the report.

After carefully reviewing the preliminary draft, I had a number of comments which I hope you will find helpful in finalizing your report. First, I agree with your finding that the original agreement among the five District Attorneys setting forth the Special Prosecutor's duties and responsibilities in coordinating narcotics prosecutions in New York City has never operated as intended and needs to be substantially revised. The original agreement, written in 1971, was signed by five District Attorneys none of whom is any longer in office. The five present District Attorneys, sitting in 1988, although still facing a serious and growing narcotics problem, face different circumstances than did their predecessors. These new conditions include changes in court structure, the advent of crack, the explosion of street drug trafficking with a resultant dramatic increase in felony prosecutions in the outer boroughs, the reality of prison overcrowding and new initiatives such as the TNT program.

Mr. James J. Haag
December 22, 1988
Page Two

In addition the existing agreement has not been adhered to in many respects. So far as I know, the Council of District Attorneys has not met in the last seventeen years to set guidelines or approve operational policies suggested by the Special Narcotics Prosecutor, although the agreement contemplated periodic meetings for this purpose. To the best of my knowledge, except as indicated in your report, no modification or update to the program has been made since its inception. The agreement set forth staff allocations for the special narcotics parts in each borough. I understand that these borough staff ratios have remained constant, even though both the felony and misdemeanor narcotics case-loads in the outer boroughs have grown dramatically in recent years.

Changes in circumstances and the experience with the program as it in fact has operated since 1971 call for a new and updated agreement that better reflects existing conditions and is ratified by existing parties. Perhaps the best way of proceeding would be to enact legislation which would specify some of the basic terms of any new agreement.

To remedy some of the deficiencies in the current agreement, the legislation might require that the agreement include the following features. A certain minimum number of meetings of the five District Attorneys should be required each year. It might also provide that deputies and supervisors in the Special Narcotics Prosecutor's Office include representatives of all five boroughs, thereby insuring greater awareness of and attention to the needs of these boroughs and facilitating cooperation and information sharing. A new agreement might provide a specific mechanism for the offices of the District Attorneys to request "buy" money from the central pool of funds available to the Special Narcotics Prosecutor, to be used in narcotics investigations conducted by the District Attorney.

At present, the Special Narcotics Prosecutor is not, as a practical matter, accountable to the District Attorneys collectively or individually for plea or other policies employed, monies spent for investigations or utilization of other resources. A new agreement might change this, perhaps by requiring policy approval from either the entire Council or at least the District Attorney of the County in which the policy will be implemented or in which the crime occurred. The agreement might also set up a mechanism for initiating joint

Mr. James J. Haag
December 22, 1988
Page Three

investigations among two or more prosecutors or between the central office of the Special Narcotics Prosecutor and the office of a particular District Attorney. The agreement could also provide for cooperative joint efforts of the District Attorneys and the Special Narcotics Prosecutor with task forces (including the New York Drug Enforcement Task Force, composed of representatives of the New York City Police Department, the New York State Police, and the federal Drug Enforcement Administration), the United States Attorneys or the Drug Enforcement Administration. The agreement might also call for an annual financial accounting to the District Attorneys.

In addition to a new agreement, other steps must be taken to enhance narcotics prosecutions in New York City. Most important, money and other resources must be allocated so that Brooklyn and the other outer boroughs get their fair share based on an analysis of each county's respective workload. The citizenry of Brooklyn, the Bronx, Queens and Staten Island are shortchanged when the bulk of the resources and, consequently, the prosecutorial efforts in New York City are concentrated in one county.

Existing budgetary inequities tend to perpetuate themselves for two reasons. First, they become part of the office's budgetary base on which future percentage increases are calculated. Second, as is clear from your report and from practice as we know it, offices with more "buy" money can create more cases in their county through active undercover operations. The cases generated by large amounts of "buy" money may also be those more likely to attract federal attention and assistance. Consequently, in any reallocation of funds, it is vital that "buy" money as well as "personal service" and "other than personal service" monies be included.

Your report correctly reflects the fact that, as I understand it, both the Brooklyn and Bronx offices carry higher narcotics caseloads per ADA than does the Special Prosecutor's office. However, they have not been provided with the enhanced investigative and prosecutorial

Mr. James Haag
December 22, 1988
Page Four

staffing available to the Special Prosecutor to prosecute more complex cases. What is worse is that the only way Brooklyn and the Bronx can keep narcotics caseloads from increasing is by re-assigning assistants from other bureaus (or utilizing assistants who would otherwise be assigned to other bureaus) to handle narcotics cases. This has affected the number of cases per assistant district attorney in these other bureaus creating an office-wide caseload crisis. In our office, there are fewer assistant district attorneys assigned to both the general felony (Supreme Court) and homicide bureaus than there were a year ago. In that same year we have added over a dozen lawyers to our narcotics prosecution effort. I understand that your audit was conducted after the major growth in our narcotics staff (and hence that growth is reflected generally in the case load ratios which you cited). With only one prosecutorial mission, the Special Prosecutor's Office is not draining other prosecutorial resources to maintain narcotics staffing levels.

Aside from resources, certain other changes would be helpful. For example, computerization of records and sharing of information (with appropriate safeguards) among the Special Narcotics Prosecutor and the Narcotics Trial Bureau and Major Narcotics Investigation Bureau or other appropriate bureaus of the other counties would greatly facilitate effective narcotics prosecution. Once a revised agreement and better information sharing are in place, it may be that there is no longer a need for such a large centralized staff or formal decentralized staff. The central office of the Special Narcotics Prosecutor could handle centralized cases and use innovative techniques such as cross-designation of assistant district attorneys from the District Attorneys offices for particular cases to permit prosecutions in complex cases involving multi-county drug operations or drug and non-drug cases in more than one county.

Finally, I believe that the Special Prosecutor's response that lenient plea bargaining policies are necessary to avoid excessive backlogs of felony cases is not adequate. Backlogs are not caused simply by tough plea policies but enormous volume, inadequate trial capacity, strained prosecutorial and judicial resources and delays occasioned by the defendant's absence -- through bail jumping or otherwise -- or the defendant's

Mr. James Haag
December 22, 1988
Page Five

reluctance to go to trial. I believe that the most appropriate solution to backlogs is a massive influx of resources coupled with a more efficient system of case processing. Short of such an infusion of resources, the solution to backlogs is not lenient plea policies but the establishment, in coordination with the Office of Court Administration and the defense bar, of a more efficient system of case processing. Statute or court rule should require a coordinated trial schedule with judges setting reasonable but firm trial dates and holding to them. Computerization of court schedules and lawyer availability would facilitate such a system.

I hope these comments have been helpful. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rhea Kemble Brecher".

Rhea Kemble Brecher
Chief Assistant
District Attorney
Kings County
(718) 802-2084

RKB:LR:yf



OFFICE OF PROSECUTION
SPECIAL NARCOTICS COURTS
80 CENTRE STREET NEW YORK, N.Y. 10013

SIXTH FLOOR
(212) 815-0400

STERLING JOHNSON, Jr.
Special Assistant District Attorney

February 6, 1989

James J. Haag
Acting Director
Legislative Commission
on Expenditure Review
111 Washington Avenue
Albany, New York 12210-2277

Dear Mr. Haag:

Enclosed please find the Office of the Special Narcotics Prosecutor's response to the LCER program audit.

If you have any questions or need any additional information concerning the response please don't hesitate to contact me.

Sincerely,


Sterling Johnson, Jr.
Special Assistant District Attorney

SJJ/kr
Encls.

The recent LCER audit of the Office of Special Narcotics Prosecutor (SNP) failed to comprehend fully the scope and depth of SNP's contributions to the New York City narcotic enforcement effort. SNP is responsible for the investigation and prosecution of the most serious, significant and complex narcotic cases throughout New York City. This office's status as the principal prosecutor's office that devotes the overwhelming proportion of its resources to major narcotic crime, its citywide jurisdiction, its special ability to attract and maintain a network of informants that provide entree to the highest echelons of drug trafficking, as well as its close working relationship with other local, national and international law enforcement agencies, has given SNP a unique and major role in narcotic law enforcement.

Although the LCER audit recognized SNP's unique stature and attempted to consider the vast range of complexity in the types of cases prosecuted, it failed to look deeply enough into the major case prosecutions, their jurisdiction and the amount of office resources devoted to those prosecutions. The report therefore, paints an inaccurate picture of the way SNP divides its resources between those utilized to prosecute New York County street level, buy and bust narcotic cases and those utilized to prosecute SNP's more substantial medium and highly complex cases that are distributed around the city. Furthermore, the audit team demonstrated a lack of understanding of how plea bargaining is used as a prosecutorial tool, and thus drew inaccurate conclusions relating to the effectiveness of SNP in fulfilling its mandate.

The report concluded that SNP program money supports a larger proportion of the New York County felony drug workload than it does for the Bronx, Kings and Queens; that SNP's plea policies are more lenient than the other counties'; and that there is a lack of coordination between SNP and the five county district attorneys. For the reasons set forth below, these conclusions are incorrect and do not comport with an objective analysis of SNP.

THE LCER AUDIT IS FLAWED BECAUSE IT IGNORED A WHOLE CLASS OF IMPORTANT, MULTI-COUNTY, MIDDLE AND HIGH LEVEL INVESTIGATIONS WHEN IT EVALUATED THE JURISDICTION OF SNP'S CASES

The LCER auditors concluded that most if not all of a substantial group of medium and highly complex cases investigated in conjunction with federal authorities, "were probably" centered in New York County.* The auditors never examined or analyzed any of these cases. This type of 'analysis by guess' not only detracts from the overall value of the audit, but also led the auditors to a wholly incorrect conclusion.

Had the auditors taken the time to review those cases they would have found the following:

1. Ninety-eight percent (98%) of the cases jointly investigated with the federal prosecutors involved counties other than or in addition to New York County;
2. Seventy-five percent (75%) of those cases had no investigative relation with New York County under the parameters established by the auditors;
3. Forty-one percent (41%) of the cases involved Queens county;
4. Forty percent (40%) involved Bronx county;
5. Twenty-five percent (25%) involved New York county;
6. Twenty percent (20%) involved Richmond county;
7. Thirteen percent (13%) involved Kings county.

*Audit text has been revised.

The auditors incorrectly assumed that Southern District contact with a case meant that the investigation centered in New York County. The auditors' explanation for not reviewing any of these joint state and federal investigations was that, "because there was no analogous cooperation between any of the five county District Attorneys' offices and the federal authorities, analyzing those SNP cases would not allow for statistical comparisons." Additionally, since no analysis of this significant group of 299 cases was conducted, nor even any analysis of a statistically significant sample of these cases conducted, the auditors were in no position to draw conclusions about the resources expended on medium and highly complex cases.

THE MEDIUM CASE COMPLEXITY CATEGORY DOES NOT ACCURATELY MEASURE RESOURCE ALLOCATION

The LCER audit, by isolating seven factors reflecting case complexity, attempted to refine a previous DCJS study of SNP wherein all cases were treated as equal in impact and value. This attempt represents a giant step forward in the understanding of what SNP contributes to the area of narcotic enforcement. The distinctions between simple buy and bust cases and long term investigations cannot be overstated. The audit team became entangled, however, in its classification system when it tried to apply that three tier system to cost analysis. The medium level of case complexity does not work when estimating resource allocations.

Simply put, each of the seven factors are not of equal resource value and cost. There is as yet, no meaningful method for equating a fixed number of low level cases with so many medium level cases and then to so many high level cases. Attempts to so equate these differing types of cases with investigations have invariably failed. For example, the cost of investigating and prosecuting a wiretap investigation is astronomical as compared with the cost of prosecuting a multi-defendant, one incident purchase of narcotics. Yet each case was assigned one complexity factor point by the auditors. In 1986, one investigation conducted by SNP into high level narcotics distribution in Kings and Richmond counties cost SNP over \$185,000 in buy money expenditures alone. Thousands of hours of legal staff time were devoted to this investigation. The subsequent successful prosecution of this case dismantled a complete cocaine and heroin distribution organization from street sellers right up to the suppliers. The value of this prosecution to the community is immeasurable and the resources expended immense, however this was only one of a number of investigations that SNP conducted in 1986. Suffice it to say that in 1986, the medium and high level cases consumed fifty-six percent (56%) of the legal personal services budget while comprising approximately twenty percent (20%) of the total number of cases prosecuted by SNP.

THE LCER AUDIT FAILED TO EVALUATE THE IN-KIND FINANCIAL CONTRIBUTIONS MADE BY THE NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE IN SUPPORT OF CITYWIDE SNP CASES

The LCER report, while concluding that SNP's resources were disproportionately concentrated in New York County, made no effort to assess the in-kind contribution of support services provided to SNP by the New York County District Attorney's Office. This failure is significant and also undercuts the findings contained in the report.

The report contains one line indicating that their proposal for reallocating funds to the separate district attorney's offices should, "take into account in-kind services provided to the Special Prosecutor by the New York County District Attorney's Office to prosecute cases outside New York County." Nowhere did the audit even attempt to assess the impact of what it was proposing. If SNP were to absorb the costs of its appellate work (approximately fifty percent (50%) of which goes to appeals of highly complex multi-county investigations), logistical support in the areas of arraignments, bail hearings, court calendar calls, case evaluation and processing, and administrative support, the effect would be that more of SNP's budget would be consumed by duplicating a system already in place in New York County, while less money would be left to

conduct sophisticated investigations of citywide significance. The LCER proposal to reallocate funds back to the county district attorneys offices is not based on a full analysis of the true costs of implementing such a proposal and would end up costing the state millions of extra dollars in needless duplicative costs.

THE AUDITORS' CONCLUSIONS ON PLEA BARGAINING DID NOT INCLUDE ANALYSIS OF SNP'S EFFECTIVE USE OF THIS PROSECUTORIAL TOOL

Another important area where the LCER audit failed to understand the duties and functions of SNP is that of plea bargaining. The conclusions reached in the audit reflect the simplistic approach that LCER utilized in evaluating SNP. The auditors did not appreciate that plea bargaining is a prosecution tool, a function of prosecutorial discretion aimed at addressing the problem of an overloaded criminal justice system. It also failed to evaluate the role that plea bargaining plays in the creation of opportunities for making bigger cases by cultivating confidential informants.

SNP'S PLEA POLICY EFFECTIVELY REDUCED CASE BACKLOGS

Police activity, fueled by the advent of crack, increased substantially in 1985 and 1986 resulting in record numbers of narcotic arrests entering the criminal justice system. During this period, indictments reached unprecedented levels, court calendars became unmanageable and the backlog of pending cases grew dangerously high. As acknowledged in the LCER audit, SNP's plea bargaining policies dealt effectively with this mounting caseload. Without compromising justice, SNP's policies helped reduce the backlog of pending cases while sending more drug defendants to state prison than any other prosecutor's office in the state. Indictments prosecuted by SNP were processed almost one month faster than the other district attorneys offices in New York City. Furthermore, the backlog was reduced, while SNP maintained, as shown in the LCER report, a conviction rate above 90% and without significant reductions in state prison sentences.

SNP'S PLEA POLICY IS USED TO CULTIVATE INFORMANTS*

SNP maintains one of the largest rosters of confidential narcotic informants of any prosecutor's office in the country. These informants are used to infiltrate sophisticated narcotic organizations. The audit failed to recognize that SNP's plea bargaining policies have increased its ability to develop these informants. The ability of SNP to continue to prosecute significant numbers of sophisticated cases is enhanced by the creation of these confidential informants. Not only was this unique aspect of SNP's function overlooked in the audit, but by not taking account of this practice when criticizing SNP's plea bargaining policies concerning Class A-I, A-II and certain B level felonies, the audit once again demonstrated that it is flawed. In certain, carefully reviewed situations where a defendant has provided material assistance in the apprehension and prosecution of major narcotic violators, SNP will allow the defendant to plead guilty to lesser charges. This invaluable practice enables SNP to pursue aggressively major narcotic violators. Of the most serious cases in 1987, the class A-I and A-II felonies, SNP prosecuted the vast majority of those sent to state prison, seventy-eight percent (78%). Clearly this shows that SNP's policies in this area are effective.

*Audit text has been revised.

SNP CONTINUES TO IMPLEMENT INNOVATIVE NARCOTIC PROGRAMS FOR USE BY COUNTY PROSECUTORS

Another significant area of SNP's functions that was overlooked in the audit was the development of Part N. The Office of Court Administration, recognizing that the rapid influx of narcotic cases was clogging the court system and leading to large case backlogs, in cooperation with SNP created Part N in 1987. The purpose of Part N, similar to the plea bargaining policies of SNP, was to dispose of felony narcotic cases at the earliest possible date through reduced, but reasonable plea offers. Part N has proven to be an unqualified success. Thousands of cases have been disposed of in Part N within days after defendants' arrests.

Furthermore, the majority of these individuals have received jail or prison sentences. Part N, because of its success, has been instituted in the Bronx, Brooklyn and Queens. This is in keeping with the original plan's intention of developing new and innovative concepts in SNP before instituting them citywide.

LCER DID NOT FULLY EXPLAIN SNP'S PROCEDURES FOR THE PROPER USE OF BUY MONEY

Another issue that the LCER report did not investigate fully was the use of money earmarked for the purchase of narcotics to pay informants. The audit reported that \$212,000 of \$750,000 in buy money went to the payment of informants. At times, confidential funds have been given to an informant for information which results in the purchase of drugs by an undercover officer. Often, the purchase would not have been possible without the information provided by the informant. In a previous study, DCJS acknowledged that confidential informant expenditures are often absolutely necessary for the purchase of narcotics. LCER had a responsibility, when criticizing SNP's buy money expenditures, to report that DCJS, in its own study, had reviewed SNP's practice and found it to be acceptable. In fact, the DCJS Proposed Contract for Fiscal Year 88/89 Guidelines for Confidential Expenditures reflects this finding and contains the following clause; "confidential funds are those funds allocated to three types of law enforcement undercover operations. 1. purchase of services (operational expenses); 2. purchase of evidence (drugs); and 3. purchase of specific information from informants."

SNP CONTINUES TO COORDINATE SOPHISTICATED NARCOTIC INVESTIGATIONS AMONG LAW ENFORCEMENT AGENCIES THROUGHOUT THE CITY

A major purpose for establishing the Office of the Special Narcotics Prosecutor was to create a centralized means of focusing limited financial resources against sophisticated drug traffickers. One of the hallmarks of the success of the Office of the Special Narcotics Prosecutor is the close working relationship that the office has developed with federal prosecuting agencies in New York. For example, in 1987 approximately sixty-five percent (65%) of the arrests processed by the United States Drug Enforcement Agency Joint Task Force were directed to SNP. The fact that these relationships exist, while federal cooperation with county district attorney offices has not yet fully developed, is evidence of the success of SNP in coordinating the citywide drug enforcement effort.

As the original plan envisioned, SNP has become the leader in the prosecution of narcotic cases. Further, SNP has established a national reputation for its leadership in the field of drug prosecutions. Members of this office have lectured on various legal and technical issues and have provided advice and expertise to other law enforcement and prosecutors' offices throughout the country. This expertise and coordination has led to the prosecution of some of the largest drug cases in the country and the dismantling of whole narcotic organizations as detailed in Appendix A.

PUBLICIZING THE 'PRELIMINARY AND CONFIDENTIAL' DRAFT OF THE AUDIT VIOLATED THE INTEGRITY OF THE AUDIT PROCESS

The matter in which LCER controlled the "preliminary and confidential" dissemination of its audit must be questioned. LCER has the responsibility to manage itself in a more professional manner. Where, as here, the "preliminary and confidential" report was made public, the integrity of the auditing process was damaged. As shown by this response, many of the conclusions drawn by the audit team were based upon a misunderstanding of the operation of SNP.

Unfortunately, once the legislators, and in this case, the press had been given copies of the audit, it certainly had lost its "preliminary and confidential" status. People in government are well aware that when information first becomes disseminated, no matter how incorrect it might be, this misinformation becomes the basis of opinions and assessments. This response, in trying to set the record straight about the true state of affairs at the Special Narcotics Prosecutor's Office, faces an insurmountable wall of already formed opinions because of the manner in which the "preliminary and confidential" draft was handled.

CONCLUSION

The Special Narcotics Prosecutor's Office is fulfilling its mandate to investigate and prosecute the most complex narcotic cases. To decentralize the staff, its resources, and expertise, as the audit recommends, will increase the costs of narcotic enforcement astronomically by creating needless duplication of limited technical and legal resources. The original plan was based upon the knowledge that narcotic investigations are expensive, highly technical, labor intensive endeavors and that the county district attorney offices, when faced with the needs of the community in all areas of criminal prosecution, would not be able to undertake the large scale expenditures that major narcotic investigations require. Further, when creating SNP, the Legislature recognized the inherent difficulty in investigating and prosecuting drug organizations that extend across county jurisdictional lines.

Recently, a new resource has been made available to state and local prosecutors in the fight against drugs. That resource is the sharing of federal forfeiture money seized in cooperative narcotic investigations. SNP pioneered the practice of a state federal partnership in the area of narcotic forfeiture, and those efforts are now being adopted as a model by other state prosecutors' offices to supplement their narcotic budgets. Notably, the Kings County District Attorney's Office is now involved in federal forfeiture proceedings and is awaiting a dispersal of funds.

This additional source of funding designed to supplement not supplant existing budget allocations is much needed in order to keep pace with the continuing growth in sophistication of drug traffickers. As the enormous expense of prosecuting these complex cases increases, new and innovative methods of supplementing all law enforcement budgets must be explored. SNP is mindful of the federal rules for receiving and using these funds and concerned that state narcotic enforcement budget allocations not be affected by the receipt of forfeiture money. Should the forfeiture money be seen as supplanting rather than supplementing existing budget levels, the federal government would be constrained by its rules, to reject forfeiture sharing requests from SNP and the county District Attorneys with the result that needed forfeiture monies would be lost.

In sum, the LCER report failed to fully understand the actual operations of the Special Narcotics Prosecutor's Office. If the major recommendations in the report were implemented, the prosecution of major narcotic crime in the entire city would suffer a serious blow. By reducing the scope of SNP and scattering its resources, the prosecution of serious narcotic crime would become haphazard, fragmented and inefficient. It would channel resources away from major case prosecutions to lower level offenses. In the absence of a major centralized focus, there would ultimately be an increase in costs for narcotic prosecutions. What is needed instead, is enhanced funding for narcotic prosecutions for SNP, as well as the city's District Attorneys so that all narcotic prosecutions in this city can receive proper support.

APPENDIX A

The following case reports exemplify the complexity of the multi-county investigations being prosecuted by SNP. These cases occurred during the time period reviewed by the auditors.

BREAKUP OF MAJOR INTERNATIONAL HEROIN RING

The breakup of an international heroin drug ring run by Leslie "Ike" Atkinson, a prison inmate serving a 44 year sentence at a federal correctional institution involved upwards of 4,000 hours of several attorneys' time. Atkinson and nine other defendants were arrested in March of 1987 after a fifteen month investigation conducted jointly by the FBI, DEA, and NYPD. It was supervised by SNP and the United States Attorneys Office for the Southern District of New York. To break that case, investigators tapped several telephones at the prison, traveled to Thailand and imported 2.4 kilograms of heroin from Thailand to New York. Attorneys from this office initiated and coordinated the investigation, wrote fourteen wiretap orders, handled extensive motions, drafted cooperation agreements, prepared witnesses, and tried the case to a successful conclusion.

DISMANTLING OF ORGANIZED CRIME NARCOTICS DISTRIBUTION CENTER

Another of SNP's highly complex cases was People of the State of New York against Theodore Persico Jr. et al. This case beginning in January of 1986 with the purchase of a small quantity of marihuana led to a sixteen month state investigation and a subsequent seven month federal investigation into large scale cocaine and heroin distribution in Brooklyn and Staten Island. Over 185,000 dollars worth of cocaine and heroin were purchased with SNP buy money by undercover police officers. A wiretap was conducted along with six state search warrants and four federal search warrants. Twenty individuals were indicted by SNP including Carmine "the Snake" Persico's nephew, Teddy Persico, a major narcotics distributor. The federal portion of this investigation led to the indictment of Gregory Scarpa, a captain in the Gambino crime family along with seven members of his "crew" on charges including extortion, narcotics sales and conspiracy. After eighteen months of motion practice and pre-trial hearings, negotiated pleas and two state trials fifteen individuals were convicted of narcotics violations, eight of whom received life terms of state incarceration. The federal prosecution also included two separate trials and led to the conviction of all eight individuals on a variety of charges. Each of the trials described lasted in excess of four weeks.

THE LONDONO a/k/a KAPLAN INTERNATIONAL COCAINE IMPORTATION RING

On December 29, 1986, Gabriel Londono and six other individuals were arrested for the sale of 50 kilograms of pure cocaine to an undercover police officer for \$1,650,000. The investigation into London's narcotic activities involved ten (10) months of work by undercover officers in Los Angeles, Miami, South America and the Caribbean. It was learned through the use of two eavesdropping orders that the defendant Londono was in the process of establishing a drug distribution organization in New York City of the kind he headed in Los Angeles and Miami.

After months of preparation and numerous recorded conversations between the undercover police officer and Londono, Londono agreed to sell the undercover fifty (50) kilograms of pure cocaine in Queens County for the sum of \$1,650,000. Londono worked with six other individuals who played various roles in supply, delivery and counter-surveillance for this deal. A five (5) kilogram sample of cocaine was delivered to the undercover officers in Queens County. Shortly thereafter, the remaining forty-five (45) kilograms of cocaine were delivered to the officers and the seven defendants were then placed under arrest. Londono pleaded guilty in this case to the top charge in the indictment, a Class A-1 felony and was sentenced to 15 years to life imprisonment.

COCAINE SMUGGLING RING AT KENNEDY INTERNATIONAL AIRPORT

On March 10, 1987, SNP along with the United States Attorney for the Eastern District of New York announced that arrest warrants had been issued for nineteen people in connection with a cocaine importation conspiracy that had been functioning for six years at the Pan American World Airways Worldport located at Kennedy International Airport. This conspiracy headed by Aart Vanwort, a former Pan American employee, had been smuggling over two hundred (200) pounds of cocaine per month into the United States for approximately six years. The street value of such a quantity would be in excess of one and one-half (1.5) billion dollars.

Vanwort was able to recruit Pan American employees to use their positions to carry cocaine-laden suitcases through customs in both Brazil and the United States without detection. Thereafter the organization distributed the cocaine in New York, San Francisco, Los Angeles, Las Vegas, Denver, Boston, Chicago, St. Louis, Atlantic City, Miami and Montreal, Canada.

SNP provided the informants and a significant amount of the buy money that was used to conduct this investigation. The prosecution of this case was divided between SNP and the Eastern District.

THIRTY-NINE MEMBERS OF A MASSIVE COCAINE TRAFFICKING ORGANIZATION OPERATING THROUGHOUT THE NEW YORK METROPOLITAN AREA ARRESTED

Seven major wire tap investigations led to the arrests of thirty-nine members of a huge cocaine distribution organization operating throughout New York City. This organization utilized sophisticated counter surveillance measures including vehicle surveillance, pen registers, telephone tapping equipment and cameras. The organization included two police officers, a computer expert, a corrections officer and a head nurse at a New York City hospital.

Intelligence gained during the course of this investigation led DEA official to estimate that this organization was capable of distributing as much as fifty (50) kilograms of cocaine monthly. Retail value of that volume was estimated to be approximately twenty (20) million dollars per month. The investigation also led to the seizure of approximately fifty (50) handguns, rifles, sawed-off shotguns and silencers, as well as twenty (20) vehicles, computers and computerized financial records. The leader of this organization, Jack Bucafusco, pleaded guilty and received a sentence of ten (10) years to life.

The fact that cases of this magnitude and scope are being successfully prosecuted by SNP demonstrates another area where the unique aspects of SNP are proven. No other state prosecutor's office in the country has the expertise to consistently prosecute such sophisticated narcotic cases.

LCER REBUTTAL

Special Narcotic Prosecutor's Response

The Special Narcotic Prosecutor's (SNP) response to the LCER audit significantly distorts the nature and intent of LCER findings and recommendations in three broad areas. The response:

Misconstrues the legislative intent of the Special Narcotics Program

The Special Prosecutor's claim that it has acted as a citywide coordinator of narcotics prosecution ignores legislative intent. The program was intended to be a coordinated effort by the City's district attorneys; linkages with the federal prosecutors are important but only in conjunction with the joint efforts of the five City district attorneys. As documented by the State Division of Criminal Justice Services (DCJS) and acknowledged by the Special Prosecutor in the audit, this office and the other district attorneys have largely acted independently failing to carry out the coordinated citywide effort intended by the Legislature (pp. 1-2).

Misrepresents the audit's major findings and recommendations

The Special Prosecutor charges that our recommendations would result in "reducing the scope of SNP and scattering its resources." In fact our recommendations seek to strengthen a citywide coordinated approach to narcotics prosecution. We recommend that the Special Prosecutor and the City district attorneys develop a formal mechanism to coordinate their narcotics prosecution efforts.

Our recommendations separate the Special Prosecutor's two roles of citywide prosecutor and New York County prosecutor. We do not question the resources available for the Special Prosecutor's role as citywide prosecutor; rather we believe that the Special Prosecutor needs to broaden the jurisdiction of its complex cases to reflect its citywide mission. We do find, however, that State funds support a greater share of New York County narcotics prosecutions than they do for the other three major boroughs and we recommend that DCJS equitably reallocate those funds. In doing so, we also recommend that New York City replace the State funds reallocated from the Special Prosecutor.

Fails to reflect the extensive audit research process

The audit involved a review of two statistically valid samples of cases prosecuted by the Special Prosecutor and by the other three major New York City district attorneys, an examination of multiple data requests, and the conduct of extensive interviews with the principal agencies involved in the enforcement and prosecution of narcotics cases in New York City. The advice of the staffs of the Special Prosecutor and the other district attorneys was integral to the development of the case complexity scale used in the audit.

The Special Prosecutor's staff had the opportunity to discuss the audit and present evidence to contravene our findings during an oral exit conference held preceding receipt of the draft and at a second conference after they received it. They did not provide LCER with any such evidence, nor did they include substantive documentation with their response.

LCER REBUTTAL

Specific Special Prosecutor Comments

1. "The LCER audit is flawed because it ignored a whole class of important, multi-county, middle and high level investigations when it evaluated the jurisdiction of SNP's cases."

In evaluating the Special Prosecutor's caseload, LCER assessed whether its medium and high complexity cases reflected its citywide prosecution role. While the Special Prosecutor-federal prosecutions were not included in our sample, their addition does not change the conclusion that the Special Prosecutor's more complex cases were disproportionately concentrated in New York County.

Of the 299 joint federal prosecutions discussed in the Special Prosecutor's response, only 89 were prosecuted in 1986, the year used for our case review. Of those cases, 62 were prosecuted in federal court and thus were not included in the LCER sample. Adding a proportionate sample of these more complex multi-jurisdiction cases drops the proportion of the Special Prosecutor's more complex cases solely within New York County from 63 percent to 58 percent. This proportion is still significantly higher than New York County's 38 percent share of 1986 City drug felony indictments.

2. "The medium case complexity category does not accurately measure resource allocation."

The case complexity scale was designed after consultation with the Special Prosecutor and the other district attorneys. The Special Prosecutor characterizes the scale as "a giant step forward in the understanding of what SNP contributes to the area of narcotics enforcement." It was designed to assess the relative complexity of the Special Prosecutor's caseload and determine whether the more complex cases were spread throughout the City. Despite the Special Prosecutor's claim, we do not link resource allocation to complexity for the Special Prosecutor's cases of medium complexity. We only recommend that the jurisdiction of those cases be broadened. The only resource allocation decision centers on the inequitable distribution of State funds to prosecute cases of low complexity in each county.

3. "The LCER audit failed to evaluate the in-kind financial contributions made by the New York County District Attorney's Office in support of citywide SNP cases."

We documented that State Special Narcotics monies for low level cases are inequitably distributed among the counties. For example, Table 13 reveals that the Special Prosecutor had 48.6 full-time equivalent assistant district attorneys (ADAs) to prosecute the predominantly low level cases within New York County in 1987. In contrast, Bronx, Kings and Queens together had 18 ADAs funded through the Special Narcotics Program. Thus State funds support a greater proportion of low level narcotics cases in New York County than in the other counties.

Having established that this inequity exists, we believe that the details of our proposed redistribution should be resolved by DCJS in consultation with the parties involved. In-kind financial contributions of the New York County District Attorney's Office to the Special Prosecutor should be considered in that redistribution. We also recommend that New York City provide the funds to replace the staff reallocated by the redistribution.

4. a. "The auditors' conclusions on plea bargaining did not include analysis of SNP's effective use of this prosecutorial tool."

- b. "SNP continues to implement innovative narcotic programs for use by county prosecutors."

The Special Prosecutor misrepresents LCER's discussion of plea bargaining. LCER's objectives were to assess compliance with legislative intent and to provide a comparison of case outcomes among prosecutors, a matter of legislative interest. We carried out these two aims and added the Special Prosecutor's explanation for the differences between its plea bargaining policies and those of the other district attorneys. We did not draw conclusions on the appropriateness of the Special Prosecutor's plea bargaining practices.

In addition, LCER addressed areas that the Special Prosecutor claims were overlooked. For example, we reviewed the development of Part N by the Special Prosecutor and the other district attorneys (p. 23). LCER also presented information on case backlogs and interviewed New York City administrative judges as requested by the Special Prosecutor. The audit also discusses the use of plea bargaining as a leverage to gain informants. To further explain the Special Prosecutor's perspective, we have added their comments on their use of plea bargaining to develop informants to the final report (p. 30).

5. "LCER did not fully explain SNP's procedures for the proper use of buy money."

The Special Prosecutor's response to our discussion of buy money is inaccurate and misleading. It claims that LCER did not report the results of a previous DCJS study on the use of buy money when in fact we did (p. 4). We agree with the Special Prosecutor's statement that buy money may be needed to pay an informant in a narcotics investigation. We found, however, that the language governing the annual State buy money appropriation of \$750,000 limits its use to the purchase of controlled substances and that the Special Prosecutor used some of those funds for other purposes--the payment of informants and other expenses of narcotics investigations. The Special Prosecutor has other State and City funds which may be used for those expenses.

6. "SNP continues to coordinate sophisticated narcotic investigations among law enforcement agencies throughout the City."

We believe that the Special Prosecutor's close and ongoing relationship with federal drug enforcement and prosecution agencies is necessary and appropriate. However, the Special Narcotics Program was intended to be a coordinated effort among the City district attorneys. Formal coordination among the district attorneys and the Special Prosecutor has been nonexistent as documented by DCJS and acknowledged by the Special Prosecutor in interviews with LCER staff. This lack of coordination has resulted in a failure to marshal all available resources against the growth of drug trafficking throughout New York City.

7. "Publicizing the ' preliminary and confidential ' draft of the audit violated the integrity of the audit process."

It is Commission policy to distribute the preliminary and confidential draft to the agency or agencies being audited, the State Division of the Budget and the members of the Commission. In this case, the agencies involved were DCJS, the Special Prosecutor and the Bronx, Kings and Queens District Attorney offices, all of which had the right to respond to the audit. The drafts are clearly labelled preliminary and confidential and other standard measures are taken to control their distribution.

As the Special Prosecutor knows, LCER staff did not publicize the preliminary and confidential draft. The draft was not circulated during the two months it was being reviewed internally. We regret that after the draft was distributed it was obtained by an individual reporter--from whom we do not know. When we were contacted by that reporter, we requested that the material not be made public since the draft was preliminary and subject to change. Though the reporter decided to ignore the request, we do not believe that this publicity damaged the integrity of the audit response process. During the response process, we met with the Special Prosecutor's staff and have duly considered their comments in our revisions to the draft report.

PROGRAM AUDITS* OF THE LEGISLATIVE COMMISSION ON EXPENDITURE REVIEW

Pupils With Special Educational Needs, April 30, 1982.*	SUNY Educational Opportunity Program, April 25, 1986.
State Division of Probation Programs, June 10, 1982.	State Day Care Centers, April 25, 1986.
State Physician Shortage-Maldistribution Programs, July 16, 1982.*	Capital Funds for Developmental and Psychiatric Centers, April 30, 1986.
Commission on Cable Television, September 15, 1982.	Crime Victims Board Programs, May 18, 1986.
Management of Youth Rehabilitation Programs, October 29, 1982.	Environmental Quality Bond Act of 1972 Land Acquisitions, June 6, 1986.
Impact of Youth Rehabilitation Programs, October 29, 1982.	Environmental Quality Bond Act of 1972 Water Quality Improvement Projects, June 12, 1986.
Council on the Arts Application Review and Funding, November 29, 1982.	Environmental Quality Bond Act of 1972 Air Quality Improvement Projects, June 12, 1986.
The Weatherization Assistance Program, December 6, 1982.	Local Police Training, August 15, 1986.
SUNY Hospitals, February 28, 1983.	Alcohol and Substance Abuse Prevention Programs, September 15, 1986.
Dormitory Vandalism on SUNY Campuses, March 24, 1983.	State Administration of New York City Rent Regulation, December 12, 1986.
Procurement of Consulting Services, March 31, 1983.*	Employee Ownership Assistance Act, December 16, 1986.
Processing of Human Rights Cases, April 25, 1983.	Mapping of State Freshwater Wetlands, December 19, 1986.
Contractual Social Services Training Programs, June 3, 1983.	State Social Services Department Income Maintenance Forecasting, February 23, 1987.
Comparative Resident and Non-Resident Tuitions, Enrollments and Policies in the Fifty States, June 7, 1983.	Higher Education Opportunity Program, February 18, 1987.
State Operated Ski Centers, September 30, 1983.	State Telecommunications, March 23, 1987.
Mental Health Community Support System, October 28, 1983.	State Child Abuse & Maltreatment Register, Child Abuse Hotline, March 23, 1987.
Education of Children Under State Care or Custody, November 30, 1983.	A Comparison of State Government Initiatives for Scientific Research and Advanced Technology in New York and Pennsylvania, March 30, 1987.
State Insurance Fund, December 9, 1983.	Community College Business and Technical Aid, April 30, 1987.
State Alcoholism Treatment Centers, December 14, 1983.	Status Report on OMRDD Information System Development, May 8, 1987.
Correctional Officer Training Program, February 15, 1984.	Urban Development Corporation High Risk Targeted Investment Program, May 9, 1987.
Neighborhood Preservation Program, March 1, 1984.	Tax Stabilization Reserve Fund, May 20, 1987.
Unemployment Insurance Benefit Payment Control, March 9, 1984.*	Relocation of State Offices from the World Trade Center, May 29, 1987.
Family Court Orders for Handicapped Children, March 9, 1984.*	Human Rights Caseload, June 1, 1987.
Bridge Rehabilitation and Replacement, April 9, 1984.	Displaced Homemakers Program, August 3, 1987.
Weatherization Assistance Program Follow-Up, April 20, 1984.	State School Aid Formula Data Quality, August 31, 1987.
The Mental Health Information Services, May 21, 1984.	Funding Projections for the Rural Rental Assistance Program, November 27, 1987.
Disaster Preparedness Programs, June 15, 1984.	Leasing and Maintenance of OMH Community Residences, December 31, 1987.
State Prison Release Programs, June 30, 1984.	Public Service Commission Utility Management Audit Program, February 19, 1988.
Home Insulation and Energy Conservation Program, September 21, 1984.	City University of New York's SEEK Program, February 26, 1988.
Power Authority of the State of New York, November 30, 1984.	State School Computer Aid Program, March 25, 1988.
State Equine Drug Testing and Research, December 31, 1984.	Leasing and Maintenance of OMRDD Community Facilities, April 20, 1988.
Local Social Services Administrative Costs, January 31, 1985.	Council on the Arts Decentralization Program, April 27, 1988.
OMRDD Information System Needs, March 15, 1985.	Special Delinquency Prevention Program, May 20, 1988.
Screening of Public School Children, April 12, 1985.	CUNY/SUNY Campus Child Care, June 24, 1988.
State Milk Dealer Licensure and Regulation, April 19, 1985.	State Agency Leasing Practices, June 29, 1988.
Control of State Employee Health Insurance Costs, April 30, 1985.	State Correctional Industries, July 5, 1988.
Preservation of Historic Resources, May 17, 1985.	Department of Taxation and Finance, Systems Modernization Project, July 27, 1988.
West Valley Nuclear Waste Management Demonstration Project, May 24, 1985.	OMH Residential Treatment Facilities, July 29, 1988.
Surplus Real Property Programs, June 7, 1985.	OMH Physicians' Extra Service Program, October 20, 1988.
Leasing of State Agency Space, June 13, 1985.	Civil Service Leaves of Absence, November 3, 1988.
CUNY/SUNY Building Repair and Equipment Replacement, June 25, 1985.	The Commission on Cable Television's role Since the Cable Act of 1984, December 21, 1988.
Mitchell-Lama Housing Mortgage Delinquencies, August 15, 1985.	Youth Development and Delinquency Prevention Program, December 31, 1988.
Environmental Quality Bond Act of 1972 Solid Waste Management Programs, December 18, 1985.	Return a Gift to Wildlife, March 15, 1989.
OMRDD Monitoring of Day Treatment Programs, December 24, 1985.	Office of the Special Narcotics Prosecutor, March 17, 1989.
SUNY CUNY Energy Management Programs, January 31, 1986.	
State Commission of Correction Programs, February 28, 1986.	
Federal Rural Transportation Assistance, March 7, 1986.	

Note: Excludes 95 reports printed 1971 through 1981. A list of these publications may be obtained by request of the Commission.

*Out of print; loan copies available upon request.

LEGISLATIVE COMMISSION ON EXPENDITURE REVIEW

Professional Staff

Claudia Carroll
Joan Deanehan
Jean Emery
Caroline Flynn
Stuart Graham
James Haag
James Held
Gerald Keyes
Joel Margolis
Karen McNamara
Martin O'Connor
Michael Rivera
Michael Roberts
David Rowell
Gary Simpson
David Smulski
Doris Stout
Donald Suriani
James Tunney
Irving Wendrovsky
Christopher Wieda
Gila Zawadzki

Administrative Staff

Dawn Hewitt
Tanya Hicks
Marilyn Kroms
Evelyn McLauchlin
Susan Peart Morales

